

No. 11821

United States
Circuit Court of Appeals

For the Ninth Circuit.

See vol. 2512

DAWSON COUNTY, MONTANA,

Appellant,

vs.

MARY HAGEN, E. B. CLARK and MINNIE R. EVANS, on
their own behalf and on behalf of all bondholders of the
Upper Glendive-Fallon Irrigation District of the State of
Montana, and UNITED STATES OF AMERICA,

Appellees,

and

MARY HAGEN, E. B. CLARK and MINNIE R. EVANS, on
their own behalf and on behalf of all bondholders of the
Upper Glendive-Fallon Irrigation District of the State of
Montana,

Appellants,

vs.

EDNA YALE, ALLEN W. YALE and RUBY YALE, his wife,
and RUTH PETTERSON and HANS PETTERSON, her
husband, THE SCOTTISH AMERICAN MORTGAGE
COMPANY, LIMITED, UNITED STATES OF AMERICA,
DAWSON COUNTY and PRAIRIE COUNTY,

Appellees.

Transcript of Record

Upon Appeals from the District Court of the United States
for the District of Montana

FILED

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD

D. C. WARREN,
Glendive, Montana.

E. W. POPHAM,
Glendive, Montana.

Attorneys for Appellants.

P. F. LEONARD,
Miles City, Montana.

D. J. O'NEIL,
Miles City, Montana.

Attorneys for Appellees.

Thereafter, on March 27, 1944, an Amended Complaint was duly filed herein, being in the words and figures as follows, to-wit: [6*]

The United States of America, in the United States
District Court, District of Montana, Billings
Division

Civil No. 348

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

PAUL T. MARKEY, et al.,
Defendants.

AMENDED COMPLAINT

The plaintiff, by leave of Court first had and obtained, files its second amended complaint herein, and complains and alleges:

I.

That the plaintiff, the United States of America, a sovereign, at the request of the Secretary of Agriculture of the United States of America, and under the instructions of the Attorney General of the United States of America, acting by and through John B. Tansil, United States Attorney for the District of Montana, and C. W. Buntin, Special Assistant to the United States Attorney, brings this action.

*Page numbering appearing at foot of page of original certified Transcript of Record.

II.

That by an Act of Congress approved August 1, 1888 c. 728 (25 Stat. L. 357), it is provided:

“That in every case in which the Secretary of the Treasury or any other officer of the Government has been or hereafter shall be authorized to procure real estate for the erection of a public building or for any other public uses he shall be and hereby is, authorized to acquire the same for the United States by condemnation, under judicial process, whenever in his opinion it is necessary or advantageous to the Government to do so, and the United States Circuit or District Courts of the District wherein such real estate is located, shall have jurisdiction of proceedings for such condemnation, and it shall be the duty of the Attorney General of the United States upon every application of the Secretary of the Treasury under this Act, or such other officer, to cause proceedings to be commenced for condemnation within thirty days from the receipt of the application of the Department of Justice.”

III.

That pursuant to the provision of the Act of October 14, 1940, (54 Stat. 1119) and by virtue of an Act of Congress approved August 1, 1888 (24 Stat. 357) hereinabove set forth in part, the Secretary of Agriculture is authorized to acquire lands by purchase, gift, judicial proceedings and other-

wise, for the public use, in pursuance of the Act of October 14, 1940, and above referred to, and has determined that it is necessary and advantageous and to the best interest of the Government to acquire title to the lands hereinafter described, for the public use, under judicial process, and that the public use or uses for which said lands are being taken and condemned are as follows, to wit: For the construction, operation and maintenance of project for utilization, reclamation and irrigation of arid and semi-arid lands and to further an effective rehabilitation program and stabilization of the agricultural economy settlement of citizens on lands reclaimed and irrigated and for the improvement of lands within the project's boundaries and all things incidental thereto and the Secretary of Agriculture has determined that it is necessary and advantageous and in the best interest of the United States to acquire title to the lands hereinafter described by condemnation under the judicial process and has made application to the Attorney General of the United States to cause proceeding to be instituted in pursuance of which application the Attorney General has instructed and directed John B. Tansil, United States Attorney for the District of Montana, and C. W. Buntin, Special Assistant to the United States Attorney, to institute these proceedings.

IV.

That the lands or real estate sought to be acquired in [9] this proceeding are situated in the Counties of Dawson and Prairie, State of Mon-

tana, and that that portion of the lands lying in the County of Dawson, State of Montana, are designated and described as follows, to wit:

Tract No. 494-1

South half ($S\frac{1}{2}$) of Section One (1), in Township Thirteen (13) North of Range Fifty-three (53) East of the Montana Principal Meridian, Montana.

Tract No. 494-2

South half of the Southwest quarter ($S\frac{1}{2}SW\frac{1}{4}$) of Section Ten (10) in Township Thirteen (13) North of Range Fifty-three (53) East of the Montana Principal Meridian, Montana.

Tract No. 494-3

South half of the Southeast quarter ($S\frac{1}{2}SE\frac{1}{4}$) of Section Ten (10) in Township Thirteen (13) North of Range Fifty-three (53) East of the Montana Principal Meridian, Montana.

Tract No. 494-4

South half ($S\frac{1}{2}$) of Section Eleven (11), Lots Two (2) and Three (3), Northwest quarter of the Northwest quarter ($NW\frac{1}{4}NW\frac{1}{4}$) of Section Thirteen (13) all of fractional Section Twenty-one (21) and Lot Eight (8) of Section Twenty-three (23) all in Township Thirteen (13) North of Range Fifty-Three (53) East of the Montana Principal Meridian, Montana.

Tract No. 494-5

Northwest quarter ($NW\frac{1}{4}$) West half of the Northeast quarter ($W\frac{1}{2} NE\frac{1}{4}$) of Section Twelve (12) in Township Thirteen (13) North of Range Fifty-three (53) East of the Montana Principal Meridian, Montana.

Tract No. 494-6

Southwest quarter ($SW\frac{1}{4}$) of Section Twelve (12) in Township Thirteen (13) North of Range Fifty-three (53) East of the Montana Principal Meridian, Montana.

Tract No. 494-7

Lots One (1), Two (2), Three (3), and Four (4) of Section Twelve (12) in Township Thirteen (13) North of Range Fifty-three (53) East of the Montana Principal Meridian, Montana.

Tract No. 494-8

Lots One (1), and Two (2), North half of the Southwest quarter ($N\frac{1}{2} SW\frac{1}{4}$) of Section Fourteen (14) in Township Thirteen (13) North of Range Fifty-three (53) East of the Montana Principal Meridian, Montana.

Tract No. 494-9

Southwest quarter of the Northeast quarter ($SW\frac{1}{4} NE\frac{1}{4}$) and Southeast quarter of the Northeast quarter ($SE\frac{1}{4} NE\frac{1}{4}$), Northwest quarter of the Northeast quarter ($NW\frac{1}{4} NE\frac{1}{4}$), North half of the Southeast quarter ($N\frac{1}{2} SE\frac{1}{4}$) and Lot Three (3) of Section Fourteen (14) in Township

Thirteen (13) North of Range Fifty-three (53)
East of the Montana Principal Meridian, Montana.

Tract No. 494-10

Northwest quarter ($NW\frac{1}{4}$) of Section Fourteen (14) in Township Thirteen (13) North of Range Fifty-three (53) East of the Montana Principal Meridian, Montana.

Tract No. 494-11

All of Section Fifteen (15) in Township Thirteen (13) North of Range Fifty-three (53) East of the Montana Principal Meridian, Montana.

Tract No. 494-12

Southwest quarter ($SW\frac{1}{4}$), that part of the Southeast quarter of the Northwest quarter ($SE\frac{1}{4}$ $NW\frac{1}{4}$) lying southeast of U. S. Highway No. 10, and more particularly described as follows:

Beginning at the southeast corner of the $SE\frac{1}{4}$ $NW\frac{1}{4}$, thence west along the south line of said $SE\frac{1}{4}$ $NW\frac{1}{4}$ a distance of 1320 feet thence north along the west line of said $SE\frac{1}{4}$ $NW\frac{1}{4}$ a distance of 931.5 feet to the south line of U. S. Highway No. 10, thence north $67^{\circ} 14'$ east along the south line of said highway a distance of 919.9 feet to its intersection with the North line of said $SE\frac{1}{4}$ $NW\frac{1}{4}$, thence east along the north line of said $SE\frac{1}{4}$ $NW\frac{1}{4}$ a distance of 438.5 feet, thence south along the east line of said $SE\frac{1}{4}$ $NW\frac{1}{4}$ a distance of 1320 feet to the point of beginning, containing 35.85 acres, more or less, all in Section Sixteen (16), Township Thirteen (13) North of Range Fifty-

three (53) East of the Montana Meridian, Montana.

Tract No. 494-13

Lots One (1), Two (2), Three (3), Four (4), Northwest quarter of the Northeast quarter ($NW\frac{1}{4}$ $NE\frac{1}{4}$), North half of the Northwest quarter ($N\frac{1}{2}$ $NW\frac{1}{4}$, Southwest quarter of the Northwest quarter ($SW\frac{1}{4}$ $NW\frac{1}{4}$) of Section Twenty-two (22) in Township Thirteen (13) North of Range Fifty-three (53) East of the Montana Meridian, Montana.

Tract No. 494-14

Lots One (1), Two (2), Three (3), Four (4), Five (5), Six (6), Seven (7), Eight (8), Eleven (11), Twelve (12), Thirteen (13), Southeast quarter of the Northwest quarter ($SE\frac{1}{4}$ $NW\frac{1}{4}$), Northeast quarter of the Southwest quarter ($NE\frac{1}{4}$ $SW\frac{1}{4}$) of Section Six (6), in Township Thirteen (13) North of Range Fifty-four (54) East of the Montana Meridian, Montana.

Tract No. 1-27

That portion of the Northwest quarter ($NW\frac{1}{4}$) lying northerly of the following described line: Beginning at a point on the west line of said Section Sixteen (16), which point lies south 2262.5 feet from the northwest corner of said Section 16, thence north $67^{\circ} 14'$ East a distance of 2863 feet to a point on the east line of said $NW\frac{1}{4}$ which point lies south 1154.5 feet from the northeast corner, of the $NW\frac{1}{4}$ of Section 16 in Township Thir-

teen (13) North of Range Fifty-three (53) East of the Montana Principal Meridian, Montana.

Tract Nos. 1-47 and 1-53

Lot Four (4) and the Northeast quarter of the Northeast quarter ($NE\frac{1}{4}$ $NE\frac{1}{4}$) of Section Fourteen (14) in Township Thirteen (13) North of Range Fifty-three (53) East of the Montana Principal Meridian, Montana. [11]

And that portion of the lands situate in the County of Prairie, State of Montana, to wit:

Tract No. 511-1

North half of the Northeast quarter ($N\frac{1}{2}$ $NE\frac{1}{4}$), West half of the Southwest quarter ($W\frac{1}{2}$ $SW\frac{1}{4}$) of Section Twenty (20) in Township Thirteen (13) North of Range Fifty-three (53) East of the Montana Principal Meridian, Montana.

Tract No. 511-2

East half of the Southwest quarter ($E\frac{1}{2}$ $SW\frac{1}{4}$), Southeast quarter ($SE\frac{1}{4}$), South half of the Northeast quarter ($S\frac{1}{2}$ $NE\frac{1}{4}$) of Section Twenty (20) in Township Thirteen (13) North of Range Fifty-three (53) East of the Montana Principal Meridian, Montana.

Tract No. 511-3

Lots One (1), and Two (2), of Section Twenty-eight (28) in Township Thirteen (13) North of Range Fifty-three (53) East of the Montana Principal Meridian, Montana.

Tract No. 511-4

Lost Two (2), Three (3), and Four (4), Northwest quarter ($NW\frac{1}{4}$), North half of the Northeast quarter ($N\frac{1}{2} NE\frac{1}{4}$) and Northwest quarter of the Southwest quarter ($NW\frac{1}{4} SW\frac{1}{4}$) less one acre in the extreme northwest corner of the Southeast quarter of the Northwest quarter ($SE\frac{1}{4} NW\frac{1}{4}$), said tract being dimensions of ten rods north and south by sixteen rods east and west in Section Twenty-nine (29) in Township Thirteen (13) North of Range Fifty-three (53) East of the Montana Principal Meridian.

Tract No. 511-5

Southeast quarter of the Southeast quarter ($SE\frac{1}{4} SE\frac{1}{4}$) of Section Thirty (30) in Township Thirteen (13) North of Range Fifty-three (53) East of the Montana Principal Meridian, Montana.

Tract No. 511-6

Lots Three (3) and Four (4) of Section Thirty (30) in Township Thirteen (13) North of Range Fifty-three (53) East of the Montana Principal Meridian, Montana.

Tract No. 511-7

Northeast quarter ($NE\frac{1}{4}$) of Section Thirty (30) North half of the Southeast quarter ($N\frac{1}{2} SE\frac{1}{4}$) of Section Thirty (30) in Township Thirteen (13) North of Range Fifty-three (53) East of the Montana Principal Meridian, Montana.

Tract No. 1-12

Lots One (1), and Two (2) and the East half of Northwest quarter ($E\frac{1}{2}$ NW $\frac{1}{4}$) of Section Thirty (30) in Township Thirteen (13) North of Range Fifty-three (53) East of the Montana Principal Meridian, Montana,

containing in all 5,788.21 acres, more or less.

That each of the said tracts of land is a separate and distinct tract of land and not part of a larger tract and that plaintiff is acquiring the lands and all the interest whatsoever; [12] of the owners therein, in fee simple by condemnation for the public use, subject, however, to existing rights of way for easements for any highway purposes, existing rights of way for telephone lines, electric light and power lines, irrigation and drainage systems and ditches, and also subject to the outstanding rights, if any, under the reservations and exceptions contained in the patents from the United States and the State of Montana, including all improvements whatsoever kind or nature, upon the said lands appurtenant thereto and subject to all reservations of minerals of plaintiff, the United States of America, in patents issued.

V.

That money has been appropriated and is available when needed to pay for the lands being condemned.

VI.

(1) That the defendant, Paul T. Markey, claims or may claim an interest in the lands and premises

above described and designated as tract 494-1, as owner or otherwise;

And that the defendant, Mrs. Paul T. Markey, wife of Paul T. Markey, if any, claims or may claim some interest in the tract above described and designated as tract 494-1, by virtue of the relation of wife or otherwise;

(2) That the defendant, Oscar R. Wilburn, claims or may claim an interest in the lands and premises above described and designated as tract 494-1 as owner or otherwise;

And that the defendant, Mrs. Oscar R. Wilburn, wife of Oscar R. Wilburn, if any, claims or may claim an interest in the lands above described and designated as tract 494-1, by virtue of the relation of wife, or otherwise;

(3) That the defendants, Eva Lee, Florence Dion, Mathilda Powderly, Mae Carlisle, Edwin Powderly and Eugene Powderly, claim or may claim an interest in the lands above described designated as tract 494-2, as owners or otherwise;

And that the defendants, Mrs. Edwin Powderly, wife of Edwin Powderly, if any, claims or may claim an interest in the lands above described and designated as tract 494-2, by virtue of the relation of wife, or otherwise;

(4) That the defendant, L. A. Fisher, claims or may claim an interest in the lands and premises above described and [13] designated as tract 494-2, as mortgagee, or otherwise;

And that the defendant, Mrs. L. A. Fisher, wife

of L. A. Fisher, if any, claims or may claim some interest in the tract above described and designated as tract 494-2, by virtue of the relation of wife or otherwise;

(5) That the defendant, Scottish American Mortgage Company, Limited, is a corporation organized and existing under and by virtue of the laws of the United Kingdom of Great Britain and Ireland, and that it claims or may claim the lands above described or an interest therein, designated and described as tracts 494-3, 494-9, 1-47 and 1-53, as owner or otherwise;

(6) That the defendant, O. M. Corwin, claims or may claim an interest in the lands above described designated as tracts 494-4 and 511-4, as owner or otherwise;

And that the defendant, Mrs. O. M. Corwin, wife, if any, of O. M. Corwin, claims or may claim an interest in the lands and premises above described designated as tracts 494-4 and 511-4 by virtue of the relation of wife or otherwise;

(7) That the Northern Pacific Railroad Company is a corporation organized under the laws of the State of Wisconsin and that it is the record owner of Lot 8 of Section 23, Township 13 North of Range 53 East, and claims or may claim the same as owner or otherwise;

(8) That Joseph Fountain died on May 28th, 1942, in the County of McCone, State of Montana. That as affiant is informed and believes, he died intestate; that his estate has been duly administered

upon in the District Court of the Seventh Judicial District in and for the County of McCone and that as affiant is informed and believes and as the record discloses, he left as his whole and only heirs at law the following named persons, to wit; David Fountain, Willard Fountain, George Fountain and Albert Howard, a minor, named as defendants herein, and that they and each of them claim or may claim some interest in the lands described and designated herein as tract 494-5.

That M. E. Howard is the duly appointed, qualified and acting guardian of the defendant, Albert Howard, a minor, and as guardian of Albert Howard, a minor defendant named herein, claims or may claim some interest as such guardian in tract designated [14] and described as tract number 494-5.

That the defendant, Mrs. David Fountain, wife if any, of David Fountain, claims or may claim some interest in tract designated number 494-5, by virtue of the relation of wife, or otherwise; and that the defendant, Mrs. Willard Fountain, wife, if any, of Willard Fountain, claims or may claim some interest in tract No. 494-5, by virtue of the relation of wife or otherwise; and that the defendant, Mrs. George Fountain, wife, if any, of George Fountain, claims or may claim some interest in tract designated No. 494-5, by virtue of the relation of wife or otherwise;

That the defendant, David Fountain, individually, claims or may claim the lands above described or a portion thereof, designated as tract

494-5, or some interest therein, as owner or otherwise, and that the defendant Mrs. David Fountain, wife of David Fountain, if any, claims or may claim some interest in the lands above described or a portion thereof, designated as tract 494-5, by virtue of the relation of wife or otherwise;

(9) That the defendant, Northwestern Mortgage Security Company, is a corporation organized under the laws of the State of North Dakota, with its office and principal place of business at Fargo, North Dakota, and that it claims or may claim some interest as mortgagee or otherwise, in the lands above described designated as tract 494-5;

(10) That the defendant, Montana State Bank, Fallon, Montana, a banking corporation, is a corporation organized under the laws of the State of Montana, and it claims or may claim an interest in the lands above described or a portion thereof, designated as tracts 494-5 and 494-14, as mortgagee or otherwise;

That the defendant, W. Alf Brown is Superintendent of State Banks of the State of Montana, and that he claims or may claim as such officer, an interest in the lands above described as tracts 494-5 and 494-14 by virtue of a mortgage held on the above described lands or a portion thereof, by the Montana State Bank, Fallon, Montana, an insolvent bank, to whose assets plaintiff is informed and believes, he has succeeded; [15]

(11) That the defendant, Frederick J. Banister, claims or may claim the lands above designated as tract 494-6, as owner or otherwise;

And that the defendant, Mattie A. Banister, wife, if any, of Frederick J. Banister, claims or may claim an interest in the lands above described, designated as tract 494-6, by virtue of the relation of wife or otherwise;

(12) That the defendant, Martin Tjensvold, claims or may claim the lands above designated as tract 494-7 as owner or otherwise; and that the defendant, Mrs. Martin Tjensvold, wife of Martin Tjensvold, if any, claims or may claim an interest in the lands above designated as tract 494-7, by virtue of the relation of wife or otherwise;

(13) That the defendant, School District No. 10, a municipal corporation of Dawson County, Montana, claims or may claim an interest as owner or otherwise in one acre of land in the northeast corner of the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 14, Township 13 North of Range 53 East of the Montana Meridian, in part of the lands above designated as tract number 494-8;

(14) That the defendants, Edna Yale, Allen W. Yale and Ruth Petterson, claim or may claim an interest in the lands above described and designated as tracts 494-8, 494-12, 1-27, 1-47, 1-53 and 511-3, as owners or otherwise;

And that the defendant, Mrs. Allen W. Yale, wife of Allen W. Yale, if any, claims or may claim an interest in the lands above described and designated as tracts 494-8, 494-12, 1-27, 1-53 and 511-3, by virtue of the relation of wife or otherwise;

(15) That the defendant, The Merchants National Bank of Glendive, a banking corporation, is

a corporation organized and existing under and by virtue of the laws of the State of Montana, and it claims or may claim an interest in the lands above described designated as tracts 494-8 and 511-1, as mortgagee or otherwise;

(16) That the defendant, Florence Jessie Louis, claims or may claim an interest in the lands described and designated as tracts 494-9, 1-47 and 1-53, as owner or otherwise; [16]

(17) That the defendant, Midland Coal and Lumber Company, a corporation, is a corporation organized under the laws of the State of Montana, with its office and principal place of business at Glendive, Montana, and that it claims or may claim an interest in the lands above described and designated as tract 494-10, as owner or otherwise;

(18) That the defendant, Mary Hagen, claims or may claim an interest in the lands above described and designated as tract 494-10, as owner or otherwise;

(19) That the defendant, John B. Weber, claims or may claim an interest in the lands above described and designated as tracts 494-11 and 494-13, or a portion thereof, as owner or otherwise;

And that the defendant, Margaret E. Weber, his wife, claims or may claim an interest in the lands above described and designated as tracts 494-11 and 494-13, or a portion thereof, by virtue of the relation of wife, or otherwise;

(20) That the defendant, Caroline Forquer, claims or may claim an interest in the lands above described and designated as tracts 494-11 and 494-13, or a portion thereof, as owner or otherwise;

And that the defendant, Bernard B. Forquer, her husband, claims or may claim some interest in the lands above described and designated tracts 494-11 and 494-13, or a portion thereof, as owner or otherwise;

(21) That the defendant, Charles G. Pearce, Trustee, claims or may claim an interest in the lands above described and designated as tract 494-11, or a portion thereof, and in tract 494-13, as owner, mortgagee, or otherwise;

(22) That the defendant, John Siegel, Sr., claims or may claim an interest in the lands or a portion thereof, described and designated as tract 494-12, as owner or otherwise;

(23) That the defendant, Alfred A. Peacock, claims or may claim an interest in the lands above described and designated as tract 494-13, as owner or otherwise;

And that the defendant, Mrs. Alfred A. Peacock, wife of Alfred A. Peacock, if any, claims or may claim an interest in the lands above described and designated as tract 494-13, by [17] virtue of the relation of wife or otherwise;

(24) That the defendant, Claud H. Young, claims or may claim an interest in the lands above described and designated, or a portion thereof, designated as tract 494-13, as owner or otherwise;

And that the defendant, Mrs. Claud H. Young, wife of Claud H. Young, if any, claims or may claim an interest in the lands above described and designated as tract 494-13, or a portion thereof, by virtue of the relation of wife, or otherwise;

(25) That the defendant, Peter E. Tjensvold, claims or may claim an interest in the lands above described designated as tract 494-14, as owner or otherwise;

And that the defendant, Lillian Tjensvold, his wife, if any, claims or may claim an interest in the lands above described and designated as tract 494-14, by virtue of the relation of wife or otherwise;

(26) That the defendant, Gabriel E. Tjensvold, claims or may claim an interest in the lands above described designated as tract 494-14, as owner or otherwise;

And that the defendant, Mrs. Gabriel E. Tjensvold, claims or may claim an interest in the lands above described, designated as tract 494-14, by virtue of the relation of wife, or otherwise;

(27) That the defendant, Sinclair Holding Company, a corporation, is a corporation organized under the laws of the State of Minnesota, with its office and principal place of business at Minneapolis, Minnesota, and that it claims or may claim an interest in the lands above described, or a portion thereof, as mortgagee or otherwise, designated as tract 494-14;

(28) That the defendant, Security Agency and Loan Corporation, is a corporation, as plaintiff is informed and believes, organized under the laws of the State of Illinois, with its office and principal place of business at Rockford, Illinois, and that it claims or may claim an interest in the lands above

described and designated as tract 494-14, as mortgagee or otherwise;

(29) That the defendant, Upper Glendive-Fallon Irrigation District is a public corporation organized and existing under [18] and by virtue of the laws of the State of Montana, with its office and principal place of business at Glendive, Montana, and that it claims or may claim some interest in the lands above described and designated as tracts 494-1, 494-2, 494-3, 494-4, 494-5, 494-6, 494-7, 494-8, 494-9, 494-10, 494-11, 494-12, 494-13, 494-14, 1-27, 1-47, 1-53, 511-1, 511-2, 511-3, 511-4, 511-5, 511-6, 511-7, and 1-12, other than as a right of way for ditches or easements of way for transportation of water excepted therefrom.

(30) That the defendant, Dawson County, Montana, is a body politic and corporate and as plaintiff is informed and believes, that it is the record owner and claims as the owner thereof, the tracts of land above described and designated as tracts 494-1, 494-2, 494-3, 494-4, 494-5, 494-6, 494-7, 494-8, 494-10, 494-9, 494-11, 494-12, 494-13 and 494-14, as owner of each thereof;

(31) That the defendant, W. C. Sloan, claims or may claim the lands above described and designated as tract 511-1, as owner or otherwise;

And that the defendant, Mrs. W. C. Sloan, wife of W. C. Sloan, if any, claims or may claim some interest in the lands above described and designated as tract 511-1, by virtue of the relation of wife or otherwise;

(32) That the defendant, Hester G. Johnson, claims or may claim an interest in the lands above described and designated as tract 511-2, as owner or otherwise;

(33) That the defendant, Elsie L. Clark, claims or may claim an interest in the lands above described and designated as tract 511-7, as owner or otherwise;

(34) That Charles A. Thurston died on or about the 14th day of January, 1943, in the County of Dawson, State of Montana. That he died testate and that his last will and testament was duly admitted to probate in the District Court of the Seventh Judicial District of the State of Montana, in and for the County of Dawson, on May 26th, 1943, and that Frank P. Abbott was appointed as the executor of his last will and testament and is now the duly qualified, acting [19] executor of the last will and testament of Charles A. Thurston, deceased, and that he as such executor claims or may claim some interest in the lands hereinabove described, designated as tract number 511-5.

That the defendant, Edith Austin, who affiant is informed and believes, is the sole and only heir at law of Charles A. Thurston, deceased, claims or may claim some interest in the lands above described and designated as tract number 511-5, and that the unknown heirs at law, if any, of Charles A. Thurston, deceased, claim or may claim some interest in the lands above described, designated as tract number 511-5.

That the defendant, Mary Olney Abbott, as devisee of Charles A. Thurston, deceased, claims or may claim an interest in the above described tract designated as tract Number 511-5, or otherwise;

That the defendants, Eleanor B. Doremus, Kenneth H. Barnard and Mary H. Barnard, as legatees of Charles A. Thurston, deceased, as plaintiff is informed and believes, claim or may claim an interest in the above described lands designated as tract number 511-5, or some part thereof;

That the defendant, Mrs. Kenneth H. Barnard, wife, if any, of Kenneth H. Barnard, claims or may claim some interest in the lands above described designated as tract 511-5, by virtue of the relation of wife or otherwise;

(35) That Robert Henderson died testate on or above the 25th day of April, 1934, in Dawson County, Montana; that his last will and testament was by an order duly given, had and made in the District Court of the Seventh Judicial District of the State of Montana, in and for the County of Dawson, duly admitted to probate May 23rd, 1934, and that Michael J. Hughes was appointed executor of his last will and testament and ever since has been and now is the duly qualified and acting Executor of the last will and testament of Robert Henderson, deceased, and of his estate, and is named as trustee of his estate as plaintiff is informed and believes, in the said last will and testament of Robert Henderson, deceased; that the defendant, Michael J. Hughes, as executor of the last will and testament and as trustee of the estate of

Robert Henderson, deceased, claims an [20] interest in the lands above described and designated as tract 1-12, as such executor and that in proceedings heretofore had, an order has been made and entered in the District Court of the Seventh Judicial District of the State of Montana, in and for the County of Dawson, authorizing the said Michael J. Hughes, as such executor to sell the lands described and designated as tract 1-12, to the plaintiff herein.

(36) That the defendants, Mabel A. Guy, Bud Guy, Christina Henderson, Christina Schepens, Mrs. Helen Johnson, Mrs. Lottie Jenkins, Robert A. Henderson, Mrs. Blanche Henry, Mrs. Aurelia Henry, Mrs. Addie Bradason, Edward Henderson, Walter Leonard Henderson, Margaret Valletta Henderson and James Walter Henderson, claim or may claim an interest in the lands above described and designated as tract 1-12, as heirs of Robert Henderson, deceased, or as devisees under the last will and testament of Robert Henderson, deceased, or otherwise;

(37) That the defendant, The Glendive Land and Irrigation Company of Glendive, a corporation, is a corporation organized and existing under and by virtue of the laws of the State of Montana, with its office and principal place of business at Glendive, Montana, and that it claims or may claim an interest in the lands above described and designated as tracts 511-4 and 511-6, as owners or otherwise;

(38) That the defendant, Prairie County, Montana, is a body politic and corporate, and as plain-

tiff is informed and believes, is the record owner of the lands described and designated as tracts 511-1, 511-2, 511-3, 511-5, 511-6, and 511-7, and claims each as owner thereof, and that it claims or may claim the lands above described and designated as tract 511-4 as owner or otherwise;

(39) That the defendants, Mary Hagen; E. B. Clark; Michael Dahlke; Farmers State Bank, a corporation; O. M. Aarseth; Alexander Seifert; R. S. Schmid; Conrad Zankle; Theo J. Hanson; J. A. Pinkava; George Coakley; L. C. Churchill; Perry Harrison; Underwood & Co., a corporation; Henry Martin; Eva I. Orr; Rena A. Eisley, Administratrix of the estate of R. C. Eisley, deceased; Paul E. Martin; Morrison & Company, a corporation; Isaac A. Milton and Mrs. Isaac A. Milton, individually and as husband and wife; Albert Anderson; N. M. Coursolle; Harry F. Johnson, Administrator of the Estate of Everett C. Johnson, deceased; Maxine Pitsch; Erick G. Eklund; Ardell W. Hansen, Administratrix of the Estate of O. F. Hansen, deceased; Ainsworth R. Hansen, Mary A. Hansen, Evelyn L. Burgess, Violette L. Davis and Lyndon E. Hansen, individually and as heirs of O. F. Hansen, deceased; Russell F. Olson; F. Leon Ottawa; C. C. Wiemals; Ruth A. McKinlay; Oscar J. Olm; Henry Anderson; C. M. Anderson; Clara Anderson Aubey; Latsch & Son Company, a corporation First National Bank & Trust Company of Minneapolis, a corporation; Esther L. Kemp; Minnie R. Evans; Victoria M. McAlmon; I. Hesdorffer; and Dawson County, Montana, a body

politic and corporate, claim or may claim an interest as lien claimants of the holders of bonds issued by the Upper Glendive Fallon Irrigation District named herein as a defendant or otherwise, in the lands above described or portions thereof, save and except tract number 1-12.

VII.

Plaintiff further alleges that the defendants herein named are the only persons who have or appear to have any interest of record in the lands above described or any part thereof, and according to the best knowledge, information and belief of the plaintiff, after due and diligent search, they are the only persons claiming an interest in the lands above described as owners or otherwise, or any part thereof in the lands or any interest therein; but notwithstanding such statement, all persons and corporations unknown, who may claim any interest in the lands described herein or any thereof, are made parties to this action or proceeding generally to the end that all right, title, interest and estate whatsoever it may be, insofar as the same may relate to or in anywise affect the acquisition of the said lands and all thereof, may be divested out of them and each of them, and vested in the plaintiff, The United States of America.

VIII.

That the plaintiff, in pursuance of the Act of February 25, 1931, [22] (48 Stat. 1421) (40 U.S.C.A. 258a) and Acts supplementary and amendatory

thereof, has filed a Declaration of Taking, and deposited in the registry of the Court the estimated value of the lands and the compensation payable to the owners thereof, and that plaintiff requires or may require the immediate possession of the said lands and premises for the public use herein alleged and set forth.

IX.

That the property hereinabove described has not heretofore been appropriated to or for any public use; that the use to which said lands are to be appropriated for the United States, are the uses authorized by law and that the taking is necessary to such use or uses as herein alleged.

Wherefore, the premises considered and to the end that the fee simple title to the lands herein described and sought to be condemned and acquired by the United States of America, in accordance with the several statutes and Acts of Congress in such cases made and provided, free and discharged from all liens, encumbrances, servitudes, charges, restrictions and covenants whatsoever, except subject to water rights or easements that may have been acquired for the public highways, the Plaintiff prays this Honorable Court:

1. To fix a day of hearing and notify and summon owners and persons interested in the lands, parcels, lots and portions constituting same, described in this complaint and that they may appear and show cause if any they have why the lands

should not be condemned as prayed for in plaintiff's complaint and to answer plaintiff's complaint on or before said day;

2. To appoint three qualified, competent and disinterested persons as commissioners to ascertain, appraise and determine the just compensation for the taking of the said property including all the buildings and improvements if any thereof, and to fix a time for their first meeting and prescribe their compensation;

3. To take such action, enter such orders, decrees and judgments as may be necessary or proper to effect the objects to which the aforesaid Acts of Congress, insofar as they relate to the acquisition of the lands or real estate require, and to [23] cause the title to said lands described in this complaint required for the said public use herein alleged, free from all liens, encumbrances, charges, restrictions, servitudes, claims and covenants whatsoever, to vest in the United States of America, in the event that upon confirmation of the report of the commissioners or the verdict of the jury herein, the Secretary of Agriculture (if in his judgment the value fixed by the Commissioners or the jury is reasonable) shall cause payment to be made out of the money appropriated by Congress according to the award of the Commissioners and/or the judgment of this Honorable Court, into the registry of the Court.

4. To grant such other and further relief as the nature of the case may require.

THE UNITED STATES OF
AMERICA,

By JOHN B. TANSIL,

U. S. Attorney for the Dis-
trict of Montana, Billings,
Montana,

Per C. W. BUNTIN,

Special Assistant to the U. S.
Attorney,

Attorneys for Plaintiff

Buffalo Rapids Project.

[Endorsed]: Filed March 27, 1944.

Thereafter, on May 13, 1944, an Answer, Counter-claim and Cross-Claim was duly filed herein, in the words and figures as follows, to-wit: [25]

[Title of District Court and Cause.]

ANSWER, COUNTER CLAIM AND
CROSS CLAIM

Come Now the defendants, Mary Hagen, E. B. Clark and Minnie R. Evans on their own behalf and on behalf of all other bond holders or warrant holders of the Upper Glendive-Fallon Irrigation District, named as defendants in the summons which

was dated March 27, 1944, and issued pursuant to the second amended complaint filed in the Clerk of the above-entitled Court, and show to the Court:

1. The said Mary Hagen, E. B. Clark and Minnie R. Evans, and all of the defendants named in the above-entitled action who are the owners of outstanding and unpaid bonds and warrants of the said Upper Glendive-Fallon Irrigation District, and who have not otherwise specially appeared in this action, have a community of interest; and the relief sought by the plaintiff in the above-entitled action is asserted against them jointly and severally; and concerns the right to relief in respect of, and rises out of the same transaction, occurrence, and series of transactions and occurrences, and the questions of law and facts involved and that will arise in this action are common to all of the said defendants and owners of bonds and warrants of said Upper Glendive-Fallon Irrigation District who have the same status and relation to said district as that occupied by the said Mary Hagen, [26] E. B. Clark and Minnie R. Evans. And this Answer and defense and counter claim and cross claim is made on behalf of the said Mary Hagen, E. B. Clark and Minnie R. Evans and on behalf of all of said defendants similarly situated and having common interest, pursuant to rules 12, 13 and 20 of the Rules of Civil Procedure.

2. These defendants admit the jurisdiction of the above-entitled district court.

3. These defendants admit that the lands described in the second amended complaint and in the said summons in the above-entitled action are required for the public use, as set forth in said second amended complaint and that condemnation thereof for the public use is necessary in order to vest the title of said lands in the United States of America. But these defendants allege that when just compensation for the taking of said property be determined that payment thereof should be made to the said Mary Hagen, E. B. Clark and Minnie R. Evans and all of the defendants similarly situated, to the extent of and in accordance with their respective interests therein.

4. As an affirmative defense and in the nature of a counter claim against the compensation deposited by the plaintiff, or ascertained to be due and as a cross claim against any of the defendants having adverse claims or interests, these defendants further allege:

a. That pursuant to a petition duly filed in the District Court of the Seventh Judicial District of the State of Montana in and for Dawson County, the Upper Glendive-Fallon Irrigation District, an irrigation district, was duly organized under the laws of the State of Montana and on December 20, 1920, an order was duly made and entered in said district court [27] of the State of Montana pursuant to said petition organizing and creating the said irrigation district, which duly established the said district and fixed and described the lands included

therein, and said irrigation district thereby became a public corporation, and all of the lands included in said district became liable to all of the debts, taxes and assessments thereof. That said order duly appointed commissioners for each division of said district; Division 1 being as to lands in said district located in Prairie County, State of Montana, and Divisions 2 and 3 covering lands located in Dawson County, State of Montana. That the commissioners appointed for said irrigation district duly qualified as provided by law.

b. That for the purpose of providing the necessary funds for the construction of a system of irrigation works for said district, in accordance with the plan of reclamation of said district approved by the Public Service Commission of the State of Montana, and as approved by resolution duly adopted by the Board of Commissioners and Directors of said District and a petition of a majority number and acreage of the holders of title or evidence of title to the lands included within said district, the said commissioners and directors of said irrigation district authorized and directed the issue of negotiable coupon bonds of the said district for the aggregate sum of \$150,000, being an issue of 300 bonds of \$500.00 each, numbered consecutively from 1 to 300, inclusive, which bonds were redeemable at the option of the said district on the first day of January of any year after 20 years from the date thereof.

That after the adoption of the said resolution of the said Board of Commissioners of said [28] irrigation district filed a petition in the said district Court of the Seventh Judicial District of the State of Montana in and for the County of Dawson to determine the validity of the proceedings had relative to the issuance of said bonds and to secure a levy of a special tax and assessment to make payment thereof and due notice of said petition and the hearing thereon was duly given as provided by law and after due hearing the said district court found and determined that the provisions and requirements of law regarding the establishment and organization of said district and the issuance of said bonds had been complied with and that due notice of said hearing had been duly given for the time and in the manner prescribed by law, and on December 2, 1922, an order was duly made and entered in said proceedings by the said District Court of Dawson County, which ratified, approved and confirmed said proceedings and ratified, approved and confirmed said bonds and the issuance thereof and the special tax and assessments required for the payment thereof, and said order authorized and directed the said Board of Commissioners of said District to issue the said bonds of said District accordingly and no appeal was taken or objection filed from the order creating and organizing said irrigation district or from the order confirming the issuance of said bonds and directing special taxes for the payment thereof. That all acts, conditions and things required or authorized by the constitution and laws of the State

of Montana to be done and to exist precedent to and in the issuance of said bonds in order to constitute same valid and binding obligations of said irrigation district and to provide for the annual levy and collections of a special tax upon all of the real estate within said irrigation district to meet the principal and interest of said bonds as they came due, were had and done and duly performed.

c. That relying upon said proceedings and the orders of said court, the commissioners of said irrigation [29] district duly issued 163 bonds for the payment of \$500.00 each or the aggregate sum of \$81,500.00, pursuant to the laws of the State of Montana, all bearing date of January 1, 1923, and all redeemable at the option of the said district on the first day of January of any year after 20 years from the date thereof, and bearing interest from their said date until paid at the rate of 6 per cent per annum, payable semi-annually on the first days of January and July of each year, and the interest and principal of said bonds were payable in gold coin of the United States of America or its equivalent, at the office of the County Treasurer of Dawson County at Glendive, Montana. That all of said bonds were signed by the President and attested by the Secretary of the Board of Commissioners of said irrigation district and under the Corporate seal thereof, and attached to each bond were interest coupons of \$15.00 each which were executed by the engraved or lithographed facsimile signatures of said president and secretary. That all of the bonds

and interest coupons were negotiable instruments and were duly issued, negotiated and sold by and under the direction of the Board of Commissioners of said district in accordance with the laws of the State of Montana.

That the secretary of said Board of Commissioners of said district kept a record of the bonds sold, their date, number, amount and maturity, to whom sold, the rate of interest and the place of payment. And the Board of Public Service Commission of the State of Montana attached to each bond a certificate that the said bond was issued in accordance with the laws of the State of Montana and each of said bonds was also duly registered in the office of the County Treasurer of Dawson County, Montana, on June 21, 1923. That said bonds were all issued, negotiated and sold for cash and the bonds were delivered to the County Treasurer of Dawson County, [30] Montana, who delivered the same to the purchasers upon receipt of the purchase price therefor, and the said County Treasurer received the proceeds of the sale of said bonds and placed same to the credit of said district and all of said proceeds were expended for the purposes for which said bonds were issued.

That each of said bonds and the interest thereon were payable from the collection of a special tax or assessment against all the lands in said irrigation district and the said bonds and the assessments levied by said district were a first and prior lien on all of the said real estate within said district and

all of the property of said district became liable for the payment of said bonds and the interest thereon.

d. Pursuant to law and in accordance with their duty, the Commissioners of said irrigation district did provide for the annual levy and collection of a special tax and assessment upon all of the lands included in the said district, which would have been sufficient, if said levy and collection had been continued, to pay the said bonds and interest. And copy of the resolution of the said Commissioners of said irrigation district for said levy was filed with the Clerk of the Board of County Commissioners of Dawson County and Prairie County, State of Montana, in which the lands in said irrigation district were situated. And it was the duty of the commissioners of said irrigation district and the duty of the County Commissioners of said Dawson County and Prairie County, Montana, to provide and make an annual levy of taxes and assessments against the lands in the said irrigation district for the payment of the principal and interest of said bonds.

e. That all of the lands described in the second amended complaint herein and in the summons in this action, were within the said irrigation district and subject to the liens of the said bonds issued by said district and the assessments thereon. [31]

That the lien of said bonds and said assessments is a general and common lien upon all of said lands in said district and described in the second amended

complaint herein and there is no way of segregating the lien as to any particular land and the said bonds are not a lien on any particular land but on all the lands in said irrigation district. That the commissioners of said irrigation district did not make or provide all levies against the lands of said district as required by law and the Board of County Commissioners of Dawson County and Prairie County, Montana, did not make all levies or assessments against the lands of said district as required by law.

f. That a list of the bonds sold, their number, names of owners and present address, so far as known, is as shown by Exhibit A attached hereto and made a part hereof, which bonds with interest at 6% per annum from Jan. 1, 1927, are due, owing and unpaid.

g. That the said Mary Hagen, E. B. Clark, jointly own bonds numbered 1 to 14, inclusive; 58 to 68, inclusive; and 71 to 80, inclusive; being \$500.00 each and of the total amount of \$17,500.00. And the defendant Minnie R. Evans owns bonds numbered 161 to 164, inclusive, or 4 bonds of \$500.00 each, or a total of \$2000.00. That the interest due and payable on said bonds have been paid to January 1, 1927, and said bonds with interest from Jan. 1, 1927, are due, owing and unpaid by defendant irrigation district of said counties.

h. That subsequent to the issuance of said bonds the defendants, Dawson County, Montana, and Prairie County, Montana, took proceedings purporting to acquire title to nearly all of the lands

included in said irrigation district excepting as to the lands hereinafter stated, and purported to have tax deeds issued on said lands to said counties and now claim title to the compensation paid or to be paid by the plaintiff herein on account of the condemnation of said lands. That the claims of the said counties to said lands and to compensation are subject to, inferior, and subsequent to said bonds and the liens thereof and the rights of these defendants. That the said [32] Dawson County and Prairie County, Montana, were and are obligated to collect against the said lands within the said district, annual assessments sufficient to pay the said bonds and the said counties occupy the status of trustees in relation to the said bonds and in relation to the owners of said bonds, and as such trustees they are prevented by law from taking a position adverse to or antagonistic to said bonds or the rights of the owners thereof.

i. That the said Dawson County and Prairie County have collected monies on levies and assessments made against said lands, which they now hold and which they have not paid or accounted for to these defendants and to the holders and owners of said bonds, and it is the duty of said counties to account to these defendants and the owners and holders of said bonds for all monies received on account of said land or on account of said assessments for the purpose of paying said bonds. And the said defendant counties have received monies from said lands on account of taxes and assessments and on account of leases made on said lands and

rents received for which no accounting has been made with these defendants or the owners and holders of said bonds.

j. That these defendants have no knowledge of the exact amount of monies received by the defendant counties, as aforesaid, and have had no accounting with the said defendant counties and it is the duty of the defendant counties to now render and give to these defendants and to the owners and holders of said bonds, a full and complete account of all taxes and assessments against said lands and of all monies received on account of said lands by the said defendant counties as trustees for the said bonds and owners thereof.

k. That these defendants and the owners and holders of said bonds have the first and prior right and claim [33] to said lands and to the compensation to be made and paid by the plaintiff, the United States of America, on the condemnation of said lands and all compensation paid by the plaintiff should be first applied upon the bonds of these defendants and the owners and holders of said bonds, in accordance with their respective interest and rights, prior to any payment to the other defendants to this action, and particularly prior to any payment to Dawson County or Prairie County.

l. That the defendants Edna Yale, Allen W. Yale and Ruby Yale, his wife, and Ruth Petterson and Hans Petterson, her husband, claim title to and the right to compensation for the lands described in the second amended complaint and the summons, as

tract No. 1-27 and the defendant, The Scottish American Mortgage Company, Limited, claim title to and the right to compensation for the lands described in the second amended complaint and the summons as tracts No. 1-47 and 1-53. But the claims of the said defendants, and each of them, are subject to, inferior and subsequent to the lien, rights and claims of these defendants and the owners and holders of said bonds in accordance with their respective interest and the compensation paid in this action is due and payable to these defendants and the owners and holders of said bonds prior to the claims of the said Edna Yale, Allen W. Yale, Ruby Yale, Ruth Petterson and Hans Petterson and The Scottish American Mortgage Company, Limited.

Wherefore, the said Mary Hagen, E. B. Clark and Minnie R. Evans petition and pray to the court as follows:

That an accounting be had by and on behalf of said defendants and on behalf of all other bond holders entitled to the same relief and having a common interest, with the defendants Dawson County and Prairie County, State of Montana, in order [34] to determine the rights of said defendants and the amount due and owing from said defendant counties and that judgment be entered accordingly.

And that the said Mary Hagen, E. B. Clark and Minnie R. Evans and other defendants who are owners and holders of said bonds and similarly

situated and having like rights and common interest, be adjudged and entitled to the prior payment of the said compensation to be paid by the plaintiff herein, and that the court hear and fix the rights of all the parties hereto in and to the said monies so paid, and that the court fix and determine all of the rights of the defendants herein as between themselves, and that judgment be entered accordingly.

And that the court direct such further notice as may be required and that a full settlement of the matters involved herein be made as may be just and equitable.

And that the said Mary Hagen, E. B. Clark and Minnie R. Evans be allowed their costs and expenses and that their attorneys be allowed such reasonable attorneys fees as may be just and equitable, to be paid out of the funds subject to the jurisdiction of the court.

DESMOND J. O'NEIL,
Glendive, Montana.

P. F. LEONARD,
Miles City, Montana.
Attorneys for Said
Defendants. [35]

EXHIBIT A

No.	Owners and Addresses	Amounts
1-14	Mary Hagen, Glendive, Mont., and E. B. Clark, Carlsbad, Calif.....	\$ 7,000.00
15-16	Michael Dahlke, Hudson, Wis.....	1,000.00
17-18	Farmers State Bank, Stephen, Minn.....	1,000.00
19-20	O. M. Aarseth, Echo, Minn.....	1,000.00
21	Alexander Seifert, Springfield, Minn.....	500.00
22	R. S. Schmid, Eden Valley, Minn.....	500.00
23-24	Conrad Zankle, Springfield, Minn.....	1,000.00
25	Theo. J. Hanson, Britton, S. D.....	500.00
26	J. A. Pinkava, Austin, Minn.....	500.00
27	George Coakley, Savage, Minn.....	500.00
28-29	L. C. Churchill, Windom, Minn.....	1,000.00
30	Perry Harrison, Excelsior, Minn.....	500.00
31-32	Underwood & Co., 56 Pine St., New York City, N. Y.	1,000.00
33-35	Henry Martin, Tupper Lake, N. Y.....	1,500.00
36-45	Mrs. Eva I. Orr, 905 W. Franklin Ave., Minneapolis, Minn.	5,000.00
46-49	Rena A. Eisley, Admr., Sheboygan, Mich.	2,000.00
50	Paul E. Martin, Tupper Lake, N. Y.....	500.00
51-53	Morrison & Co., 250 E. 6th St., Minneapolis, Minn.	1,500.00
54	Mr. or Mrs. Isaac A. Milton, Long Beach, Calif.	500.00
55-57	Albert Anderson, Sup. Ct., Helena, Mont., and N. M. Coursolle, Minneapolis, Minn.....	1,500.00
58-68	Mary Hagan and E. B. Clark, supra.....	5,500.00
69-70	Paul E. Martin, supra.....	1,000.00
71-80	Mary Hagen and E. B. Clark, supra.....	5,000.00
81-87	Morrison & Co., Minneapolis, Minn.....	3,500.00
88-89	I. Hesdorffer, U. of M., Missoula, Mont.....	1,000.00
90	H. F. Johnson, Admr. Estate E. C. Johnson, Dec., Winona, Minn.....	500.00
91	Maxine Fitch (Fitsch), 303 Wisconsin St., Chicago, Ill.	500.00

No.	Owners and Addresses	Amounts
92	Erick G. Eklund, Fooston, Minn.....	\$ 500.00
93	Ardell W. Hansen, Admr. Estate O. F. Hansen, Dec., Heirs Ainsworth R. Hansen, Glendale, Calif., Violette L. Davis, Farmington, Minn., and Lyndon E. Hansen, 1217 4th St., Minneapolis, Minn.....	500.00
94	Morrison & Co.....	500.00
95-100	I. Hedorffer, supra.....	3,000.00
101	Russell F. Olson, Victor, S. D.....	500.00
102	F. Leon Ottawa, Isle, Minn.....	500.00
103-106	C. C. Wiemals, Hazelton, N. D.....	2,000.00
107	Morrison & Co., supra.....	500.00
108-109	Ruth A. McKinlay, Midford, Minn.....	1,000.00
110-111	Oscar J. Olm, 900 W. 48th St., Minneapolis, Minn.	1,000.00
114-115	Clara J. Anderson Aubey, St. Louis Park, Minn.	1,000.00
118-121	Henry Anderson, Rush City, Minn.....	2,000.00
122-125	C. M. Anderson, Conde, S. D.....	2,000.00
126-127	Clara L. Anderson Aubey, supra.....	1,000.00
128-137	Latsch & Son Co., Winona, Minn.....	5,000.00
138-141	1st Natl. Bank & Tr. Co., Trustee, Minneapolis, Minn.	2,000.00
142-147	Esther L. Kemp, Lake City, Minn.....	3,000.00
148-149	Latsch & Son Co., supra.....	1,000.00
150-152	Ruth A. McKinlay, Medford, Minn.....	1,500.00
155-156; 172-173; 191-192; 210-211,	Latsch & Son Co.	4,000.00
161-164	Minnie R. Evans, Rochester, Minn.....	2,000.00
231-232	Ruth A. McKinlay, supra.....	1,000.00
300	Victoria M. McAlmon, 2717 Waverly Drive, Los Angeles, Calif.....	500.00
		<hr/>
		\$81,500.00

[Endorsed]: Filed May 13, 1944. [36]

Thereafter, on May 20, 1944, an Answer of Dawson County and Petition for Distribution was duly filed herein, in the words and figures following, to-wit: [37]

[Title of District Court and Cause.]

ANSWER AND PETITION FOR DISTRIBUTION

Comes now Dawson County, Montana, a body politic and corporate, and answers plaintiff's complaint herein.

Answering defendant admits the allegations of plaintiff's complaint and for further answer alleges:

I.

That Dawson County, Montana, is a body politic and corporate, created under the laws of the State of Montana, and as such and under date of January 12, 1942, executed an offer in writing to sell to the United States of America for the sum of Twenty-three Thousand Five Hundred Twenty-six Dollars (\$23,526.00) the lands described in plaintiff's complaint as tracts numbered 494-1 to 494-14, inclusive; that said offer to sell was made pursuant to certain proceedings had and done by the Board of County Commissioners of said Dawson County, Montana, all of which were in accord with the statutory provisions and laws of the State of Montana particularly relating to the sale and disposal of all

lands acquired by Dawson County, Montana, under tax deed proceedings; that a true and correct transcript of said proceedings had and done by the said Dawson County, Montana, acting by and through its Board of County Commissioners, is hereto attached, hereof made a part and by reference marked "Answering Defendant's Exhibit A." [38].

II.

That the lands involved in said tax deed proceedings, sold to the United States and involved in this action, upon which tax deed were obtained by Dawson County, Montana, including taxes levied by the State of Montana, Dawson County, Montana, and school districts, and taxes levied by Upper Glendive-Fallon Irrigation District, a public corporation, together with the purchase price of each tract as appraised and valued by the Board of County Commissioners of Dawson County, Montana, and agents of the Government of the United States, being officers, attorneys and employees of the Farm Security Administration of the United States of America, are as follows, to-wit:

Tract 494-1

South Half (S1½) of Section One (1) in Township Thirteen (13) North of Range Fifty-three (53) East of the Montana Principal Meridian, Montana. Value fixed by agreement between Dawson County, Montana, and United States of America.....		\$3,316.10
General Taxes.....	\$ 581.57	
Interest on General Taxes.....	159.95	
Irrigation Taxes.....	2,216.96	

Tract 494-2

South Half of the Southwest Quarter ($S\frac{1}{2}$ - $SW\frac{1}{4}$) of Section Ten (10) in Township Thirteen (13) North of Range Fifty-three (53) East of the Montana Principal Meridian, Montana. Value fixed by agreement between Dawson County, Montana, and the United States of America..... \$ 684.40

General Taxes.....	\$ 154.80
Interest on General Taxes.....	40.55
Irrigation Taxes.....	704.00

Tract 494-3

South Half of the Southeast Quarter ($S\frac{1}{2}$ - $SE\frac{1}{4}$) of Section Ten (10) in Township Thirteen (13) North of Range Fifty-three (53) East of the Montana Principal Meridian, Montana. Value fixed by agreement between Dawson County, Montana, and the United States of America..... \$ 734.00

General Taxes.....	\$ 203.52
Interest on General Taxes.....	55.84
Irrigation Taxes.....	1,182.43

Tract 494-4

South Half ($S\frac{1}{2}$) of Section Eleven (11), Lots Two (2) and Three (3), Northwest Quarter of the Northwest Quarter ($NW\frac{1}{4}NW\frac{1}{4}$) of Section Thirteen, all in Township Thirteen (13) North of Range Fifty-three (53) East of the Montana Principal Meridian, Montana. Value fixed by agreement between Dawson County, Montana, and the United States of America.... \$5,587.13

General Taxes.....	\$ 998.81
Interest on General Taxes.....	275.13
Irrigation Taxes.....	8,179.14

Tract 494-5

Northwest Quarter ($NW\frac{1}{4}$), West Half of the Northeast Quarter ($W\frac{1}{2}NE\frac{1}{4}$) of Section Twelve (12) in Township Thirteen (13) North of Range Fifty-three (53) East of the Montana Principal Meridian, Montana. Value fixed by agreement between Dawson County,

Dawson County, Montana vs.

Montana, and the United States of America....	\$1,920.00
General Taxes.....	\$ 605.54
Interest on General Taxes.....	166.33
Irrigation Taxes.....	4,133.91

Tract 494-6

Southwest Quarter (SW $\frac{1}{4}$) of Section Twelve (12) in Township Thirteen (13) North of Range Fifty-three (53) East of the Montana Meridian, Montana. Value fixed by agreement between Dawson County, Montana, and the United States of America.....	\$1,280.00
General Taxes.....	\$ 448.17
Interest on General Taxes.....	123.31
Irrigation Taxes.....	3,253.25

Tract 494-7

Lots One (1), Two (2), Three (3) and Four (4) of Section Twelve (12) in Township Thirteen (13) North of Range Fifty-three (53) East of the Montana Principal Meridian, Montana. Value fixed by agreement between Dawson County, Montana, and the United States of America	\$ 275.08
General Taxes	\$ 153.30
Interest on General Taxes.....	42.04
Irrigation Taxes	1,257.95

Tract 494-8

Lots One (1) and Two (2), the North Half of the Southwest Quarter (N $\frac{1}{2}$ SW $\frac{1}{4}$) of Section Fourteen (14) in Township Thirteen (13) North of Range Fifty-three (53) East of the Montana Principal Meridian, Montana. Value fixed by agreement between Dawson County, Montana, and the United States of America	\$ 680.50
General Taxes.....	\$ 695.58
Interest on General Taxes.....	194.73
Irrigation Taxes.....	3,124.78

Tract 494-9

Southwest Quarter of the Northeast Quarter (SW $\frac{1}{4}$ NE $\frac{1}{4}$), and Southeast Quarter of the Northeast Quarter (SE $\frac{1}{4}$ NE $\frac{1}{4}$), Northwest Quarter of the Northeast Quarter (NW $\frac{1}{4}$ -

NE $\frac{1}{4}$) and Lot Three (3) of Section Fourteen (14) in Township Thirteen (13) North of Range Fifty-three (53) East of the Montana Principal Meridian, Montana. Value fixed by agreement between Dawson County, Montana, and the United States of America..... \$ 993.60

General Taxes.....	\$ 625.18
Interest on General Taxes.....	173.74
Irrigation Taxes.....	3,844.70

Tract 494-10

Northwest Quarter (NW $\frac{1}{4}$) of Section Fourteen (14) in Township Thirteen (13) North of Range Fifty-three (53) East of the Montana Principal Meridian, Montana. Value fixed by agreement between Dawson County, Montana, and the United States of America..... \$ 320.00

General Taxes.....	\$ 260.99
Interest on General Taxes.....	72.78
Irrigation Taxes.....	2,793.82

Tract 494-11

All of Section Fifteen (15) in Township Thirteen (13) North of Range Fifty-three (53) East of the Montana Principal Meridian, Montana. Value fixed by agreement between Dawson County, Montana, and the United States of America \$ 995.00

General Taxes	\$2,348.94
Interest on General Taxes.....	747.50
Irrigation Taxes	2,211.32

Tract 494-12

Southwest Quarter (SW $\frac{1}{4}$), that portion of the Southeast Quarter of the Northwest Quarter (SE $\frac{1}{4}$ NW $\frac{1}{4}$) lying southeast of U. S. Highway No. 10 and more particularly described as follows: Beginning at the southeast corner of the SE $\frac{1}{4}$ NW $\frac{1}{4}$, thence west along the south line of said SE $\frac{1}{4}$ NW $\frac{1}{4}$, a distance of 1320 feet, thence north along the west line of said SE $\frac{1}{4}$ NW $\frac{1}{4}$ a distance of 931.5 feet to the south line of U. S. Highway No. 10, thence

north 67°14' east along the south line of said highway a distance of 919.9 feet to its intersection with the north line of said SE $\frac{1}{4}$ NW $\frac{1}{4}$, thence east along the north line of said SE $\frac{1}{4}$ -NW $\frac{1}{4}$ a distance of 438.5 feet, thence south along the east line of said SE $\frac{1}{4}$ NW $\frac{1}{4}$ a distance of 1320 feet to the point of beginning, containing 35.85 acres, more or less, all in Section Sixteen (16), Township Thirteen (13) North of Range Fifty-three (53) East of the Montana Principal Meridian, Montana. Value fixed by agreement between Dawson County, Montana, and the United States of America..... \$2,242.65

General Taxes.....	\$ 533.33
Interest on General Taxes.....	133.20
Irrigation Taxes.....	3,767.29

Tract 494-13

Lots One (1), Two (2), Three (3), Four (4), Northwest Quarter of the Northeast Quarter (NW $\frac{1}{4}$ NE $\frac{1}{4}$), North Half of the Northwest Quarter (N $\frac{1}{2}$ NW $\frac{1}{4}$), Southwest Quarter of the Northwest Quarter (SW $\frac{1}{4}$ NW $\frac{1}{4}$) of Section Twenty-two (22) in Township Thirteen (13) North of Range Fifty-three (53) East of the Montana Principal Meridian, Montana. Value fixed by agreement between Dawson County, Montana, and the United States of America \$ 606.90

General Taxes.....	\$2,552.94
Interest on General Taxes.....	702.14
Irrigation Taxes.....	2,432.11

Tract 494-14

Lots One (1), Two (2), Three (3), Four (4), Five (5), Six (6), Seven (7), Eight (8), Eleven (11), Twelve (12), Thirteen (13), Southeast Quarter of the Northwest Quarter (SE $\frac{1}{4}$ NW $\frac{1}{4}$), Northeast Quarter of the Southwest Quarter (NE $\frac{1}{4}$ SW $\frac{1}{4}$) of Section Six (6), in Township Thirteen (13) North of Range Fifty-four (54) East of the Montana Principal Meridian, Montana. Value fixed by

agreement between Dawson County, Montana, and the United States of America.....	\$3,890.64
General Taxes.....	\$ 715.58
Interest on General Taxes.....	194.33
Irrigation Taxes.....	2,561.32

III.

That this answering defendant is informed and believes that a [41] Declaration of Taking has been filed in the above-entitled action and the purchase price for which the said lands were sold by Dawson County, Montana, to the United States of America, in the amount of Twenty-three Thousand Five Hundred Twenty-six Dollars (\$23,526.00), was deposited in the registry of this Court, and that by virtue of filing said Declaration of Taking all right, title, interest and claim upon the filing thereof to the lands above described, vested in the United States of America. That no person or persons whomsoever, other than answering defendant herein is entitled to distribution of the compensation deposited in the registry of the Court for said lands other than your petitioner, Dawson County, Montana, and that no other person or persons whomsoever had any right, title, interest or claim to the real property condemned by the United States of America and hereinbefore described in the preceding paragraph hereof, other than answering defendant, Dawson County, Montana, and that said lands are free and clear of all encumbrances whatsoever and that there are no outstanding taxes or delinquent taxes against the said lands by reason of the acquiring of title thereto by defendant Dawson County, Montana, a sub-division of the State of Montana, and that this answering defendant is entitled to immediate distri-

bution of the compensation deposited in the registry of this Court for the lands above described and the whole thereof by reason of said sale of said real property by Dawson County, Montana, to the United States of America, as hereinbefore set forth, and by reason of the Declaration of Taking entered in the above-entitled action; and further, answering defendant consents that the Court may enter all judgments or orders that may be required for divesting the answering defendant herein of all right, title, interest and claim in and to the lands above described, and to vest all right, title, interest and claim of answering defendant to the lands herein described in the United States of America.

That in order to complete said sale of said lands to the United States of America pursuant to action previously taken by the Board of County Commissioners of Dawson County, Montana, and on May 4, 1943, a resolution was duly made and entered by the Board of County Commissioners of Dawson County, Montana, a body politic and corporate, and passed by a unanimous [42] vote of the members of said Board at a regular meeting thereof held on said date, authorizing the Chairman of the Board of County Commissioners and the Clerk of Dawson County, Montana, to sign and execute any and all conveyances of said real property, vesting title thereto in the United States of America, upon payment of the consideration therefor in the sum of \$23,526.00, and to take any and all action necessary to complete said sale and to secure payment of the consideration for the said lands by answer and petition in the above-entitled action, which is herein-
above set forth

Wherefore, answering defendant prays that an order be made and entered distributing the compensation deposited in the registry of this Court to answering defendant, Dawson County, Montana, and for such other and further order as to the Court may seem meet in the premises.

E. W. POPHAM,

D. C. WARREN,

Attorneys for Defendant,

Dawson County, Montana.

ANSWERING DEFENDANT'S EXHIBIT A

Office of County Clerk and Recorder

State of Montana,

County of Dawson—ss.

I, L. T. Elliot, County Clerk of Dawson County, State of Montana, hereby certify that the following documents, viz:

1. Appraisal and order of Sale
2. Publication
3. Posting
4. Sale
5. Option to Government
6. Renewal of Option

are true and correct copies of originals filed and recorded in my office.

In Witness Whereof, I have hereunto set my hand and seal of the County this 12th day of May A. D. 1944.

[Seal]

L. T. ELLIOT,

Clerk and Recorder.

Special Session

Office of County Commissioners, Glendive,
Dawson County, Montana

March 23, 1940

Commissioners met at 10 o'clock a.m., in extra session pursuant to resolution and posted notice with all members answering the roll call.

The Commissioners now proceeded to appraise certain tracts of land acquired through tax deed procedure, after which the following resolution was passed without dissent.

Resolution

Resolved that the board will on May 4, 1940, beginning at 10 o'clock a.m., of said day at the front door of the court house in Glendive, Montana offer for sale at public auction to the highest bidder all the right, title, interest, estate, lien, claim and demand of the State of Montana, County of Dawson, in and to the following described real property and the board appraised, determined and fixed the fair market value of said property at the amount set after the description.

Lots 1, 2, 3, 4, 5, 6, 7, 8, 11, 12 and 13, SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Sec. 6-13-54.....	\$3,600.00
S $\frac{1}{2}$ of Sec. 1-13-53.....	3,600.00
S $\frac{1}{2}$ S $\frac{1}{2}$ of Sec. 10-13-53.....	1,300.00
S $\frac{1}{2}$ of Sec. 11-13-53.....	2,550.00
Lots 1, 2, 3, 4, W $\frac{1}{2}$ NE $\frac{1}{4}$ and W $\frac{1}{2}$ of Sec. 12-13-53	3,475.00
Lots 2 and 3, NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Sec. 13-13-53.....	788.00
Lots 1, 2, 3, N $\frac{1}{2}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ of Sec. 14-13-53.....	1,990.00

All of Sec. 15-13-53.....	\$ 995.00
SW $\frac{1}{4}$ and SE $\frac{1}{4}$ NW $\frac{1}{4}$ South of State Highway in Sec. 16-13-53.....	2,255.00
Lots 1 and 2, N $\frac{1}{2}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$, W $\frac{1}{2}$ of Sec. 21-13-53	2,370.00
Lots 1, 2, 3, 4, NW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ - NW $\frac{1}{4}$ of Sec. 22-13-53.....	600.00
Lot 9 of Sec. 23-13-53.....	3.00

No sale shall be made for a price less than the fair market value thereof, as determined and fixed by the board prior to making this order of sale and all the above lands described as being in township 13 are subject to the lien of the unpaid balance of certain Bonds issued by the Upper Glendive-Fallon Irrigation District Jan. 1, 1923.

At 5 o'clock all business up for consideration having been disposed of a motion in due form adjourned the meeting Sine Die.

Approved:

H. F. PURDUM,
Chairman.

Attest:

L. T. ELLIOT,
Clerk of the Board. [45]

Notice of Sale of Tax Title Property By Dawson County

By Order of the board of County Commissioners entered on its minutes of the 23rd day of March, 1940, the board will on May 4, 1940, beginning at 10 o'clock a.m. of said day at the front door of the Court House in the City of Glendive, Montana, offer

for sale at public auction all the right, title, interest, estate, lien, claim and demand of the State of Montana and County of Dawson in and to the following real property, which the board has appraised, determined and fixed the fair market value at the amount set after the description.

All of Sec. 15-14-53.....	\$ 500.00
W $\frac{1}{2}$ of Sec. 25-15-43.....	320.00
Lots 1 and 2, Sec. 26-15-55.....	40.00
All of Sec. 32-15-57.....	320.00
S $\frac{1}{2}$ of Sec. 4-16-54.....	500.00
N $\frac{1}{2}$, N $\frac{1}{2}$ S $\frac{1}{2}$ of Sec. 28-17-51.....	480.00
NE $\frac{1}{4}$ of Sec. 8-18-57.....	80.00
All of Sec. 24-20-50.....	320.00
All of Sec. 20-20-51.....	320.00
SE $\frac{1}{4}$ of Sec. 9-20-53.....	400.00
S $\frac{1}{2}$ of Sec. 8-20-55.....	240.00
All of Sec. 34-22-52.....	640.00
Lots 1, 2, 3, 4, 5, 6, 7, 8, 11, 12 and 13, SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Sec. 6-13-54.....	3,600.00
S $\frac{1}{2}$ of Sec. 1-13-53.....	3,600.00
S $\frac{1}{2}$ S $\frac{1}{2}$ of Sec. 10-13-53.....	1,300.00
S $\frac{1}{2}$ of Sec. 11-13-53.....	2,550.00
Lots 1, 2, 3, 4, W $\frac{1}{2}$ NE $\frac{1}{4}$ and W $\frac{1}{2}$ of Sec. 12-13-53	3,475.00
Lots 2 and 3, NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Sec. 13-13-53.....	788.00
Lots 1, 2, 3, N $\frac{1}{2}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ of Sec. 14-13-53.....	1,990.00
All of Sec. 15-13-53.....	995.00
SW $\frac{1}{4}$ and SE $\frac{1}{4}$ NW $\frac{1}{4}$ South of State Highway in Sec. 16-13-53.....	2,255.00
Lots 1 and 2, N $\frac{1}{2}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$, W $\frac{1}{2}$ of Sec. 21-13-53	2,370.00
Lots 1, 2, 3, 4, NW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ - NW $\frac{1}{4}$ of Sec. 22-13-53.....	600.00
Lot 9 of Sec. 23-13-53.....	3.00

No Sale shall be made for a price less than the market value thereof as fixed by the Board of County Commissioners prior to making this order

of sale and all the above lands described as being in Township 13 are subject to the lien of the unpaid balance of certain bonds issued by the Upper Glendive Fallon Irrigation district January 1, 1923.

Dated March 25, 1940.

L. T. ELLIOT,
County Clerk,

M28 A 4-11

Affidavit of Publication

State of Montana,
County of Dawson—ss.

G. J. Hoole, being duly sworn, on his oath, says he is, and during all the time hereinafter mentioned, has been Printer and Publisher of The Dawson County Review, a weekly newspaper of general circulation, printed and circulated at Glendive, in said County and State. That the said Notice of Sale of Tax Title Property by Dawson County a printed copy of which, cut from the columns of said newspaper, is hereunto attached and made a part hereof, was printed and published in said newspaper three (3) successive weeks, on the following dates, to-wit:

March 28, 1940

April 4-11, 1940

/s/ G. J. HOOLE.

Subscribed and sworn to before me this 4th day of May, A.D. 1940.

L. T. ELLIOT,
County Clerk and Recorder, Dawson County,
Montana. [46]

Office of the County Clerk and Recorder. L. T.
Elliot, Clerk, Glendive, Montana.

State of Montana,
County of Dawson—ss.

H. F. Purdum, G. A. Hicks and L. T. Elliot being
duly sworn on their oath, do say that on the 24th
day of March, A. D., 1940, they each posted a
notice of sale listing county lands to be sold on
May 4, 1940.

/s/ H. F. PURDUM,

/s/ G. A. HICKS,

/s/ L. T. ELLIOT.

Subscribed and Sworn to before me this 5th day
of September, 1940.

[Seal]

JAMES J. DVORAK,

Notary Public for the State of Montana residing
at Glendive, Montana.

My Commission Expires Feb. 23, 1943. [47]

State of Montana,
County of Dawson—ss.

H. F. Purdum, G. A. Hicks and L. T. Elliot being duly sworn on their oath, do say that on the 24th day of March, A. D., 1940 they each posted a notice of sale listing county lands to be sold on May 4, 1940.

H. F. PURDUM,
G. A. HICKS,
L. T. ELLIOT.

Subscribed and Sworn to before me this 5th day of September, 1940.

[Seal] /s/ JAMES J. DVORAK,
Notary Public for the State of Montana, residing
at Glendive, Montana.

My Commission Expires Feb. 23, 1943. [48]

Extra Session

Office of Board of County Commissioners, Glendive,
Dawson County, Montana

May 4, 1940

The Commissioners met in extra session pursuant to resolution of March 23, 1940 and with all members and clerk present.

At 10 o'clock the board repaired to the front door of the Court House and proceeded to auction off the various pieces of land set out in the minutes of the Commissioners proceedings of March 23, 1940.

S $\frac{1}{2}$ Sec. 4-16-54 was struck off to Louis Highland for....	\$500.00
S $\frac{1}{2}$ Sec. 25-18-51 was struck off to Geo. Broghammer for	500.00
W $\frac{1}{2}$ Sec. 25-15-53 was struck off to John J. Nadwornick for	320.00
NE $\frac{1}{4}$ Sec. 8-18-57 was struck off to August Sobotka for	80.00
SE $\frac{1}{4}$ Sec. 13-17-51 was struck off to Leonard J. Quammen for	700.00
(less 2 acres)	
SE $\frac{1}{4}$ Sec. 9-20-53 was struck off to Howard Whitmer for	430.00
Lots 1 and 2, Sec. 26-15-55 was struck off to Wm. E. Stanfill for	40.00

No bids being offered for any of the other pieces of land duly advertised for this time the sale was closed and meeting duly adjourned.

Approved:

H. F. PURDUM,
Chairman.

Attest:

L. T. ELLIOT,
Clerk of the Board. [49]

Office of Board of County Commissioners, Glendive
Dawson County, Montana

September 5, 1940

The Commissioners met at 9 o'clock a.m., with full membership present.

Elmer Wicks of the Farm Security Administration now appeared and took up with the board the purchase of County owned lands by the government. After discussion, the following resolution was read and moved for adoption, being duly seconded and put, same was unanimously carried.

Resolution

Whereas, the lands listed below were duly appraised by the Board of County Commissioners of Dawson County on March 23, 1940, who also on the said date ordered the Clerk of the Board to publish and post notices of sale in accordance with Section 2208.1, Revised Codes of Montana, 1935;

And, Whereas, affidavit of Publication and Posting are duly filed in the office of the Clerk and Recorder, and the date of sale of the said lands listed below are designated as May 4, 1940;

And Whereas, no bids were made or offered for the purchase of the following described lands at the date set for sale of same, namely, May 4, 1940; the land so described with acreage being as follows, to-wit:

Southwest Quarter (SW $\frac{1}{4}$) and the Southeast Quarter (SE $\frac{1}{4}$) of Section One (1); South Half of the Southeast Quarter (S $\frac{1}{2}$ SE $\frac{1}{4}$)

and South Half of the Southwest Quarter ($S\frac{1}{2}SW\frac{1}{4}$) both in Section Ten (10), South Half ($S\frac{1}{2}$) of Section Eleven (11); Lots One (1), Two (2), Three (3), Four (4), West Half of the Northeast Quarter ($W\frac{1}{2}NE\frac{1}{4}$), East Half of the Northeast Quarter ($E\frac{1}{2}NW\frac{1}{4}$), West Half of the Northwest Quarter ($W\frac{1}{2}NW\frac{1}{4}$), Southwest Quarter ($SW\frac{1}{4}$) of Section Twelve (12); Lots Two (2), Three (3), Northwest Quarter of the Northwest Quarter ($NW\frac{1}{4}NW\frac{1}{4}$) of Section Thirteen (13); Lots One (1), Two (2), Three (3), Northwest Quarter of the Northeast Quarter ($NW\frac{1}{4}NE\frac{1}{4}$), South Half of the Northeast Quarter ($S\frac{1}{2}NE\frac{1}{4}$), Northwest Quarter ($NW\frac{1}{4}$), North Half of the South Half ($N\frac{1}{2}S\frac{1}{2}$) of Section Fourteen (14), All of Section Fifteen (15); Southwest Quarter ($SW\frac{1}{4}$) and that portion of the Southeast Quarter of the Northwest Quarter ($SE\frac{1}{4}NW\frac{1}{4}$) of Section Sixteen (16) lying Southeast of United States Highway No. 10, more particularly described as follows: Beginning at the Southeast (SE) Corner of the Southeast Quarter of the Northwest Quarter ($SE\frac{1}{4}NW\frac{1}{4}$), thence west along the South line of said Southeast Quarter of the Northwest Quarter ($SE\frac{1}{4}NW\frac{1}{4}$), a distance of one thousand three hundred and twenty (1,320) feet, thence North along the west line of said Southeast Quarter of the Northwest Quarter ($SE\frac{1}{4}NW\frac{1}{4}$), a distance of nine hundred thirty-one and five-tenths (931.5) feet to the South line

of United States Highway No. 10, thence North sixty-seven degrees and fourteen minutes ($67^{\circ} 14'$) East along the south line of said Highway, a distance of nine hundred nineteen and nine-tenths (919.9) feet to its intersection with the North line of said Southeast Quarter of the Northwest Quarter ($SE\frac{1}{4}NW\frac{1}{4}$); thence East along the North line of said Southeast Quarter of the Northeast Quarter ($SE\frac{1}{4}NW\frac{1}{4}$), a distance of four hundred thirty-eight and five tenths (438.5) feet; thence South along the East line of said Southeast Quarter of the Northwest Quarter ($SE\frac{1}{4}NW\frac{1}{4}$), a distance of one thousand three hundred twenty (1,320) feet to the point of [50] beginning, containing thirty-five and eighty-five hundredths (35.85) acres more or less; North Half ($N\frac{1}{2}$), Southwest Quarter ($SW\frac{1}{4}$), North Half of the Southeast Quarter ($N\frac{1}{2}SE\frac{1}{4}$), Lots One (1), Two (2) of Section Twenty-one (21); Lots One (1), Two (2), Three (3), Four (4) Northwest Quarter of the Northeast Quarter ($NW\frac{1}{4}NE\frac{1}{4}$), North Half of the Northwest Quarter ($N\frac{1}{2}NW\frac{1}{4}$), Southwest Quarter of the Northwest Quarter ($SW\frac{1}{4}NW\frac{1}{4}$) of Section Twenty-two (22), Lot Nine (9) of Section Twenty-three (23), all in Township Thirteen (13) North, Range Fifty-three (53) East, M. P. M. Lots One (1), Two (2), Three (3), Four (4), Five (5), Six (6), Seven (7), Eight (8), Eleven (11), Twelve (12), Thirteen (13), Southeast Quarter of the Northwest Quarter ($SE\frac{1}{4}NW\frac{1}{4}$), North-

east Quarter of the Southwest Quarter (NE $\frac{1}{4}$ SW $\frac{1}{4}$) of Section Six (6), Township Thirteen (13) North, Range Fifty-four (54) East, Montana Principal Meridian, containing in all 4,164.36 Acres more or less.

And, Whereas, the said County of Dawson, acting by and through the Board of County Commissioners, desires to option the above described lands to the United States of America, by and through the Farm Security Administration, an agency thereof,

Now, Therefore, Be It Resolved by the Board of County Commissioners of Dawson County, State of Montana, that it hereby execute an option for the above described lands to the United States of America for the sum of twenty three thousand five hundred twenty six and no/100 dollars (\$23,526.00), said sum being not less than 90% of the appraised value thereof.

Dated this 5th day of September, 1940.

H. F. PURDUM,
Chairman.

G. A. HICKS,
Member.

F. E. BROWN,
Member.

Attest:

L. T. ELLIOT,
Clerk of the Board.

After executing the option a copy of same was ordered filed in the office of the Clerk and Recorder.

At 5 o'clock all matters up for consideration having been disposed of a motion duly made and carrier adjourned the session sine die.

Approved:

H. F. PURDUM,
Chairman.

Attest:

L. T. ELLIOT,
Clerk of the Board. [51]

Office of County Commissioners, Glendive,
Dawson County, Montana

September 4, 1941

Commissioners met at 9 o'clock a.m., in order to conclude the session with all members present.

Dan Kelly of the Farm Security Administration now appeared and presented an option whereby the United States Government proposes to buy certain tracts of land fully described in the Option thereof also set out in Commissioners' Proceedings of Book 10, Pg. 177.

Upon motion duly made and carried signatures were authorized and option executed according to form.

At 5 o'clock all business up for consideration having been disposed of, a motion duly made and carried, brought the session to a sine die adjournment.

Approved:

G. A. HICKS,
Chairman.

Attest:

L. T. ELLIOT,
Clerk of the Board. [52]

[Affidavits of mailing to: P. F. Leonard and C. W. Buntin attached.]

[Endorsed]: Filed May 20, 1944. [54]

Thereafter, on May 20, 1944, a Reply of Dawson County was duly filed herein, in the words and figures following, to-wit:

[Title of District Court and Cause.]

REPLY

Comes now the defendant Dawson County, Montana, a body politic and corporate, and replying to the Answer, Counter Claim and Cross Claim of Mary Hagen, E. B. Clark and Minnie R. Evans admits, denies and alleges as follows, to-wit:

Replying to paragraphs numbered 1 and 3 and subdivisions a, b, d, e, f, g, i, j, k and l in paragraph 4, this defendant alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in said Answer, Counter Claim and Cross Claim and therefore denies the same and each and every part thereof, and specifically denies that part of paragraph 4 subdivision c wherein said defendants allege that "said bonds and the assessments levied by said district were a first and prior lien on all of the said real estate within said district and all of the property of said district became liable for the payment of said bonds and the interest thereon."

As to the allegations in paragraph 4 subdivision h, defendant alleges that the proceedings taken by it under the laws of Montana to acquire title to said lands under tax deed proceedings fully and completely divested the answering defendants Mary

Hagen, E. B. Clark and Minnie R. Evans of all right, title, interest or claim to any part of the compensation paid into the registry of this Court as and for the value of the lands condemned in this action, which were prior to said condemnation proceedings sold by the said Dawson County, [56] Montana to the United States of America, as alleged in the answer of said defendant filed herein, reference to which is hereby specifically made; and defendant specifically denies that part of paragraph 4 subdivision h wherein said defendants Mary Hagen, E. B. Clark and Minnie R. Evans allege that "the claims of the said counties to said lands and to compensation are subject to, inferior, and subsequent to said bonds and the liens thereof and the rights of these defendants."

Wherefore, said defendant Dawson County, Montana, having fully replied to the answer, counter claim, and cross claim of said defendants Mary Hagen, E. B. Clark and Minnie R. Evans, prays that judgment be entered herein in accordance with its answer and petition for distribution.

E. W. POPHAM,
Glendive, Montana,
D. C. WARREN,
Glendive, Montana,
Attorneys for defendant
Dawson County, Montana.

[Affidavits of mailing to: P. F. Leonard and C. W. Buntin attached.]

[Endorsed]: Filed May 20, 1944. [59]

Thereafter, on July 11, 1944, an Order for Distribution was duly filed and entered herein, in the words and figures following, to-wit: [60]

[Title of District Court and Cause.]

ORDER FOR DISTRIBUTION

The petition of Dawson County, Montana, for distribution of the compensation paid into the registry of the Court on account of condemning lands standing in the name of Dawson County, Montana, designated as tracts 494-1, 494-2, 494-3, 494-4, 494-5, 494-6, 494-7, 494-8, 494-9, 494-10, 494-11, 494-12, 494-13 and 494-14, having been duly presented to the Court, and it appearing to the Court from testimony submitted that Dawson County, Montana, was the record owner of the lands and claimed all of the lands at the time Declaration of Taking was filed and money deposited in the registry of the Court, save and except tract number 494-1-4 as to Lots 1, 2 and 13 of Sec. 6, Tp. 13 N, R. 54 E, and general taxes in amount of \$249.68 and it further appearing to the Court that there were unpaid General taxes assessed, delinquent and unpaid at the time Dawson County, Montana, applied for tax deeds for the respective tracts and tax deeds were issued to it by the County Treasurer, in the amount of Ten thousand six hundred twenty-eight and 57/100 (\$10,628.57) Dollars and that there were delinquent, unpaid assessments made and unpaid on account of the Upper Glendive Fallon Irrigation District, in the amount of Forty-one thousand six

hundred sixty-two and 98/100 Dollars and that Dawson County, Montana, had a first and superior lien against the lands condemned as against any and all other persons for the general taxes, delinquent and unpaid, at the time tax title deeds were executed and delivered to it for the said lands and that no person or persons could establish a claim as against Dawson County, Montana, to the portion of the compensation deposited in the registry of the Court representing the delinquent, unpaid taxes outstanding at the time tax deeds were taken, and is entitled to distribution of this portion of the compensation without notice to others before same is distributed, and the Court being fully advised in the premises—

It Is the Order of the Court That out of the compensation in the amount of Twenty-three thousand five hundred twenty-six Dollars (\$23,526.00) deposited in the registry of the Court as the estimated compensation for the taking of the tracts of land above referred to, that there be distributed to the County Treasurer of Dawson County, Montana, at Glendive, Montana, Ten thousand six hundred twenty-eight and 57/100 Dollars (\$10,628.57), and that the remainder of the compensation deposited in the registry of the Court on account of the taking of said tracts remain impounded in the registry of the Court until further order or disposition thereof is made, and the Clerk will make distribution accordingly.

Dated this the 11th day of July, 1944.

CHARLES N. PRAY,

United States District Judge.

[Endorsed]: Filed and entered July 11, 1944.

Thereafter, on October 1, 1945, the Return and Report of Commissioners was duly filed herein, in the words and figures following, to-wit: [63]

[Title of District Court and Cause.]

RETURN AND REPORT OF COMMISSIONERS

We, the undersigned, Cecil Zody, Glenn Hitchcock, and Ed Kempton, the duly appointed, qualified and acting commissioners to appraise, assess and determine the just compensation incident to taking and acquiring the lands in their entirety by the plaintiff for the public use, and particularly for the Buffalo Rapids Project, and all things incidental thereto, situate in the Counties of Prairie and Dawson, State of Montana, described as follows, to wit:

Tract No. 494-1

South half (S1½) of Section One (1) in Township Thirteen (13) North of Range Fifty-three (53) East of the Montana Principal Meridian, Montana.

Tract No. 494-2

South half of the Southwest quarter (S1½SW¼) of Section Ten (10) in Township Thirteen (13) North of Range Fifty-three (53) East of the Montana Principal Meridian, Montana.

Tract No. 494-3

South half of the Southeast quarter (S1½SE¼) of Section Ten (10) in Township Thirteen (13)

North of Range Fifty-three (53) East of the Montana Principal Meridian, Montana.

Tract No. 494-4

South half ($S\frac{1}{2}$) of Section Eleven (11), Lots Two (2) and Three (3), Northwest quarter of the Northwest quarter ($NW\frac{1}{4}NW\frac{1}{4}$) of Section Thirteen (13), all of fractional Section Twenty-one (21) and Lot Eight (8) of Section Twenty-three (23) all in Township Thirteen (13) North of Range Fifty-three (53) East of the Montana Principal Meridian, Montana.

Tract No. 494-5

Northwest quarter ($NW\frac{1}{4}$), West half of the Northeast quarter ($W\frac{1}{2}NE\frac{1}{4}$) of Section Twelve (12) in Township Thirteen (13) North of Range Fifty-three (53) East of the Montana Principal Meridian, Montana. [64]

Tract No. 494-6

Southwest quarter ($SW\frac{1}{4}$) of Section Twelve (12) in Township Thirteen (13) North of Range Fifty-three (53) East of the Montana Principal Meridian, Montana.

Tract No. 494-7

Lots One (1), Two (2), Three (3) and Four (4), Section Twelve (12) in Township Thirteen (13) North of Range Fifty-three (53) East of the Montana Principal Meridian, Montana.

Tract No. 494-8

Lots One (1), and Two (2), North half of the Southwest quarter ($N\frac{1}{2}SW\frac{1}{4}$) of Section Fourteen (14) in Township Thirteen (13) North of Range Fifty-three (53) East of the Montana Principal Meridian.

Tract No. 494-9

Southwest quarter of the Northeast quarter ($SW\frac{1}{4}NE\frac{1}{4}$), and Southeast quarter of the Northeast quarter ($SE\frac{1}{4}NE\frac{1}{4}$), Northwest quarter of the Northeast quarter ($NW\frac{1}{4}NE\frac{1}{4}$), North half of the Southeast quarter ($N\frac{1}{2}SE\frac{1}{4}$) and Lot Three (3) of Section Fourteen (14) in Township Thirteen (13) North of Range Fifty-three (53) East of the Montana Principal Meridian, Montana.

Tract No. 494-10

Northwest quarter ($NW\frac{1}{4}$) of Section Fourteen (14) in Township Thirteen (13) North of Range Fifty-three (53) East of the Montana Principal Meridian, Montana.

Tract No. 494-11

All of Section Fifteen (15) in Township Thirteen (13) North of Range Fifty-three (53) East of the Montana Principal Meridian, Montana.

Tract No. 494-12

Southwest quarter ($SW\frac{1}{4}$), That part of the Southeast quarter of the Northwest quarter ($SE\frac{1}{4}NW\frac{1}{4}$) lying southeast of U. S. Highway No. 10, and more particularly described as follows:

Beginning at the southeast corner of the Southeast quarter of the Northwest quarter ($SE\frac{1}{4}$ - $NW\frac{1}{4}$), thence west along the south line of said Southeast quarter of the Northwest quarter ($SE\frac{1}{4}$ - $NW\frac{1}{4}$), a distance of 1320 feet, thence north along the west line of said $SE\frac{1}{4}$ $NW\frac{1}{4}$ a distance of 931.5 feet to the south line of U. S. Highway No. 10, thence north $67^{\circ} 14'$ east along the south line of said highway a distance of 919.9 feet to its intersection with the North line of said $SE\frac{1}{4}$ $NW\frac{1}{4}$, thence east along the north line of said $SE\frac{1}{4}$ $NW\frac{1}{4}$ a distance of 438.5 feet, thence South along the East line of said $SE\frac{1}{4}$ $NW\frac{1}{4}$ a distance of 1320 feet to the point of beginning, containing 35.85 acres, more or less, all in Section 16, Township 13 North of Range 53 East of the Montana Meridian, Montana.

Tract No. 494-13

Lots One (1), Two (2), Three (3), Four (4), Northwest quarter of the Northeast quarter ($NW\frac{1}{4}$ - $NE\frac{1}{4}$), North half of the Northwest quarter ($N\frac{1}{2}$ $NW\frac{1}{4}$), Southwest quarter of the Northwest quarter ($SW\frac{1}{4}$ $NW\frac{1}{4}$) of Section Twenty-two (22) in Township Thirteen (13) North of Range Fifty-three (53) East of the Montana Principal Meridian, Montana. [65]

Tract No. 494-14A

Lots One (1), Two (2) and Thirteen (13) of Section Six (6) in Township Thirteen (13) North of Range Fifty-four (54) East of the Montana Principal Meridian, Montana.

Tract No. 494-14B

Lots Three (3), Four (4), Five (5), Six (6), Seven (7), Eight (8), Eleven (11) and Twelve (12), Southeast quarter of the Northwest quarter ($SE\frac{1}{4}NW\frac{1}{4}$), Northeast quarter of the Southwest quarter ($NE\frac{1}{4}SW\frac{1}{4}$) of Section Six (6), in Township Thirteen (13) North of Range Fifty-four (54) East of the Montana Principal Meridian, Montana.

Tract No. 1-27

That portion of the Northwest quarter ($NW\frac{1}{4}$) lying northerly of the following described line: Beginning at a point on the west line of the said Section Sixteen (16) which point lies south 2262.5 feet from the northwest corner of said Section 16, thence north $67^{\circ} 14'$ East, a distance of 2863 feet to a point on the east line of said $NW\frac{1}{4}$ which point lies south 1154.5 feet from the northeast corner of the $NW\frac{1}{4}$ of Section 16 in Township Thirteen (13) North of Range Fifty-three (53) East of the Montana Principal Meridian, Montana.

Tracts 1-47 and 1-53

Lot Four (4), and the Northeast quarter of the Northeast quarter ($NE\frac{1}{4}NE\frac{1}{4}$) of Section Fourteen (14) in Township Thirteen (13) North of Range Fifty-three (53) East of the Montana Principal Meridian, Montana,

all lying and being in Dawson County, Montana, and,

Tract No. 511-1

North half of the Northeast quarter ($N\frac{1}{2}NE\frac{1}{4}$), West half of the Southwest quarter ($W\frac{1}{2}SW\frac{1}{4}$)

of Section Twenty (20) in Township Thirteen (13) North of Range Fifty-three (53) East of the Montana Principal Meridian, Montana.

Tract No. 511-2

East half of the Southwest quarter ($E\frac{1}{2}$ $SW\frac{1}{4}$), Southeast quarter ($SE\frac{1}{4}$), South half of the Northeast quarter ($S\frac{1}{2}$ $NE\frac{1}{4}$) of Section Twenty (20) in Township Thirteen (13) North of Range Fifty-three (53) East of the Montana Principal Meridian, Montana.

Tract No. 511-3

Lots One (1) and Two (2) of Section Twenty-eight (28) in Township Thirteen (13) North of Range Fifty-three (53) East of the Montana Principal Meridian, Montana.

Tract No. 511-4

Lots Two (2), Three (3) and Four (4), Northwest quarter ($NW\frac{1}{4}$), North half of the Northeast quarter ($N\frac{1}{2}$ $NE\frac{1}{4}$), Northwest quarter of the South west quarter ($NW\frac{1}{4}$ $SW\frac{1}{4}$), less one acre in the extreme northwest corner of the $SE\frac{1}{4}$ $NW\frac{1}{4}$, said tract being dimensions of 10 rods north and south by 16 rods east and west, in Section Twenty-nine (29) in Township Thirteen (13) North of Range Fifty-three (53) East of the Montana Principal Meridian, Montana.

Tract No. 511-5

Southeast quarter of the Southeast quarter ($SE\frac{1}{4}$ $SE\frac{1}{4}$) of Section Thirty (30) in Township Thirteen

(13) North of Range Fifty-three (53) East of the Montana Principal Meridian, Montana. [66]

Tract No. 511-6

Lots Three (3) and Four (4) of Section Thirty (30) in Township Thirteen (13) North of Range Fifty-three (53) East of the Montana Principal Meridian, Montana.

Tract No. 511-7

Northeast quarter ($NE\frac{1}{4}$) of Section Thirty (30), North half of of the Southeast quarter ($N\frac{1}{2}SE\frac{1}{4}$) of Section Thirty (30) in Township Thirteen (13) North of Range Fifty-three (53) East of the Montana Principal Meridian, Montana,

all lying and being in Prairie County, Montana.

in pursuance of the Court's instructions, do hereby determine, assess and fix the just compensation for the taking of the above described lands by the plaintiff on April 27th, 1942, as follows:

For Tract No. 494-1, the sum of Three thousand three hundred sixteen and 10/100 Dollars (\$3,316.10);

For Tract No. 494-2, the sum of Six hundred eighty-four and 40/100 Dollars (\$684.40);

For Tract No. 494-3, the sum of Seven hundred thirty-four and no/100 Dollars (\$734.00);

For Tract No. 494-4, the sum of Five thousand five hundred eighty-seven and 13/100 Dollars (\$5,587.13);

For Tract No. 494-5, the sum of One thousand nine hundred twenty and no/100 Dollars (\$1,920.00);

For Tract No. 494-6, the sum of One thousand two hundred eighty and no/100 Dollars (\$1,280.00);

For Tract No. 494-7, the sum of Two hundred seventy-five and 08/100 Dollars (\$275.08);

For Tract No. 494-8, the sum of Six hundred eighty and 50/100 Dollars (\$680.50);

For Tract No. 494-9, the sum of Nine hundred ninety-three and 60/100 Dollars (\$993.60);

For Tract No. 494-10, the sum of Three hundred twenty and no/100 Dollars (\$320.00);

For Tract No. 494-11, the sum of Nine hundred ninety-five and no/100 Dollars (\$995.00);

For Tract No. 494-12, the sum of Two thousand two hundred forty-two and 65/100 Dollars (\$2,242.65); [67]

For tract No. 494-13, the sum of Six Hundred six and 90/100 Dollars (\$606.90);

For Tract No. 494-14A, the sum of Five hundred seventy-five and no/100 Dollars (\$575.00);

For Tract No. 494-14B, the sum of Thirty-three hundred fifteen and 64/100 Dollars (\$3,315.64);

For Tract No. 1-27, the sum of Seven hundred fifty-eight and no/100 Dollars (\$758.00);

For Tract No. 1-47 and tract No. 1-53, the sum of Four hundred Twenty-five and no/100 Dollars (\$425.00);

For Tract No. 511-1, the sum of One thousand seven hundred thirty and no/100 Dollars (\$1,730.00);

For Tract No. 511-2, the sum of One thousand five hundred seventy and no/100 Dollars (\$1,570.00);

For Tract No. 511-3, the sum of Two hundred and no/100 Dollars (\$200.00);

For Tract No. 511-4, the sum of One thousand eight hundred and no/100 Dollars (\$1,800.00);

For Tract No. 511-5, the sum of One hundred fifty and no/100 Dollars (\$150.00);

For Tract No. 511-6, the sum of Eight hundred ninety and no/100 Dollars (\$890.00);

And for Tract No. 511-7, the sum of One thousand three hundred forty and no/100 Dollars (\$1,340.00);

Making a total for tracts 511-1, 511-2, 511-3, 511-4, 511-5, 511-6 and 511-7, Seven thousand six hundred eighty and no/100 Dollars (\$7,680.00).

The just compensation so assessed and fixed for the lands above described includes the improvements upon the said lands.

Dated this the 29 day of September, 1945.

G. O. HITCHCOCK,

Chairman,

E. F. KEMPTON,

Secretary,

C. H. ZODY,

Commissioner.

[Endorsed]: Filed Oct. 1, 1945. [68]

Thereafter, on December 5, 1945, Final Judgment in Condemnation was filed and entered herein, in the words and figures following, to-wit: [69]

The United States of America, In the United
States District Court, District of Montana,
Billings Division

Civil No. 348

THE UNITED STATES OF AMERICA,
Plaintiff,
vs.
PAUL T. MARKEY, et al.,
Defendants.

FINAL JUDGMENT IN CONDEMNATION

This cause having been brought by the filing of the complaint and amended complaint herein and the defendants above named, and each of them having been served with process, and the defendants, Peter B. Tjensvold and Lillian Tjensvold, his wife, Martin Tjensvold and Mrs. Martin Tjensvold, his wife, Michael J. Hughes as Executor and Trustee under the last will and testament of Robert Henderson, deceased, Alexander Seifert, Richard S. Schmid, Conrad Zankle, Mary Hagan, E. B. Clark, Minnie R. Evans, Dawson County, Montana, a body politic and corporate, and Daniel P. Dempsey, as guardian ad litem of Albert Howard, a

minor, having appeared herein and filed their respective answers, and Judgment having been previously entered herein as to tract number 1-12, and the defendants, Paul T. Markey and Mrs. Paul T. Markey, his wife, if any; Oscar R. Wilburn and Helen S. Wilburn, husband and wife; Eva Lee; Mathilda Powderly; Mae Carlisle; Florence Dion; Edwin Powderly and Mrs. Edwin Powderly, his wife, if any; Eugene Powderly and Mrs. Eugene Powderly, his wife, if any; L. A. Fisher and Mrs. L. A. Fisher, his wife, if any; The Scottish American Mortgage Company, Limited; O. M. [71] Corwin and Mrs. O. M. Corwin, his wife, if any; David Fountain, Willard Fountain, and George Fountain, heirs at law of Joseph W. Fountain, deceased; M. E. Howard, Guardian of Albert Howard, a minor; Mrs. Willard Fountain, wife, if any, of Willard Fountain; Mrs. George Fountain, wife, if any of George Fountain; David Fountain and Mrs. David Fountain, his wife, if any; Northwestern Mortgage Security Company, a corporation; Montana State Bank, Fallon, Montana, a banking corporation; W. Elf Brown Superintendent of State Banks of the State of Montana and ex officio receiver of Montana State Bank, Fallon, Montana, a banking corporation; Frederick J. Banister; Mattie A. Banister, the wife of Frederick J. Banister, if any; Edna Yale; Allen W. Yale and Mrs. Allen W. Yale, his wife, if any; Ruth Petterson; The Merchants National Bank of Glendive, Montana, a banking corporation; Florence Jessie Louis;

Midland Coal and Lumber Company, a corporation; John B. Weber and Margaret E. Weber, his wife; Carolyn M. Forquer and Bernard B. Forquer, her husband; Charles G. Pearce, Trustee; Alfred A. Peacock and Mrs. Alfred A. Peacock, his wife, if any; Claud H. Young and Mrs. Claud H. Young, his wife, if any; Gabriel E. Tjensvold and Mrs. Gabriel E. Tjensvold, his wife, if any; Sinclair Molding Company, a corporation; Security Agency and Loan Corporation; Upper Glendive-Fallon Irrigation District; W. C. Sloan and Mrs. W. C. Sloan, his wife, if any; Hester G. Johnson; Frank P. Abbott, executor of the last will and testament of Charles A. Thurston, deceased; Eleanor B. Doremus, Kenneth H. Barnard and Mary H. Barnard, legatees of Charles A. Thurston, deceased; Mrs. Kenneth H. Barnard, wife, if any, of Kenneth H. Barnard; Mary Olney Abbott, devisee of Charles A. Thurston, deceased, Edith Austin, sole and only heir at law of Charles A. Thurston, deceased; the unknown heirs at law, if any, of Charles A. Thurston, deceased; Elsie L. Clark, The Glendive Land and Irrigation Company of Glendive, a corporation; Prairie County, Montana, a body politic and corporate; Northern Pacific Railroad Company, a corporation; School District No. 10, a municipal corporation of Dawson County, Montana; Michael Dahlke; Farmers State Bank, a corporation; O. M. Aarseth; Theo. J. Hanson; J. A. Pinkava; George Coakley; L. C. Churchill; Perry Harrison; Underwood & Co., a corporation; Henry Martin; Eva I.

Orr; Rena A. Eisley, Administratrix of the estate of R. C. Eisley, deceased; Paul E. Martin; Morrison & Company, a corporation; Isaac A. Milton and Mrs. Isaac A. Milton, individually and as husband and wife; Albert Anderson, N. M. Courselle; Harry F. Johnson, Administrator of the Estate of Everett C. Johnson, deceased; [72] Maxine Pitsch; Erick G. Eklund; Ardell W. Hansen; Administratrix of the Estate of O. F. Hansen, deceased; Ainsworth R. Hansen, Mary A. Hansen, Evelyn L. Burgess, Violette L. Davis and Lyndon E. Hansen, individually and as heirs of O. F. Hansen, deceased; Russell F. Olson; F. Leon Ottawa; C. C. Wiemals; Ruth A. McKinlay; Oscar J. Olm; Henry Anderson; C. M. Anderson; Clara L. Anderson Aubey; Latsch & Son Company, a corporation; First National Bank & Trust Company of Minneapolis, a corporation; Esther L. Kemp; Victoria M. McAlmon; I. Hesdorffer, and all persons unknown, claiming any interest in the lands herein described or any part thereof, and each of them having defaulted and their defaults to appear and answer having been duly entered and the Court having thereafter entered an order determining the property and the whole thereof described therein was required for the public use and commissioners having thereafter been appointed by the Court to ascertain, appraise and assess the just compensation payable for the lands being condemned described herein, and the commissioners having thereafter made their return into Court fixing the compensation payable for the

respective tracts hereinafter designated and described, in the following sums, to wit:

For tract 494-1.....	\$3,316.10
For tract 494-2.....	684.40
For tract 494-3.....	734.00
For tract 494-4.....	5,587.13
For tract 494-5.....	1,920.00
For tract 494-6.....	1,280.00
For tract 494-7.....	275.08
For tract 494-8.....	680.50
For tract 494-9.....	993.60
For tract 494-10.....	320.00
For tract 494-11.....	995.00
For tract 494-12.....	2,242.65
For tract 494-13.....	606.90
For tract 494-14A	575.00
For tract 494-14B	3,315.64
For tract 1-27.....	758.00
For tracts 1-47 and 1-53.....	425.00
For tract 511-1.....	1,730.00
For tract 511-2.....	1,570.00
For tract 511-3.....	200.00
For tract 511-4.....	1,800.00
For tract 511-5.....	150.00
For tract 511-6.....	890.00
For tract 511-7.....	1,340.00

and the awards being acceptable to the Secretary of Agriculture and notice of filing the return of the commissioners having been duly issued by the Clerk of the Court and thirty days time having elapsed since the service of notice of filing the return of the commissioners on the plaintiff and appearing defendants, [73] and the plaintiff nor defendants nor either of them having appealed from the awards of the commissioners for the respective tracts or any of them, and the Court being fully advised in the premises——

Now Therefore, on motion of John B. Tansil, United States Attorney, and C. W. Buntin, Special Assistant to the United States Attorney, attorneys for the plaintiff herein.

The Court now adopts the awards of the commissioners of compensation for the respective tracts of land hereinafter described, and,

It Is Ordered, Adjudged and Decreed That the respective sums awarded and returned by the commissioners for the respective tracts of land, constitute and are, full, just compensation for the condemning and taking of said tracts of land.

It Is Further Ordered, Adjudged and Decreed that the tracts of land lying in the County of Dawson, State of Montana, designated and described as follows, to wit:

Tract No. 494-1

South half ($S1\frac{1}{2}$) of Section One (1), in Township Thirteen (13) North of Range Fifty-three (53) East of the Montana Principal Meridian, Montana.

Tract No. 494-2

South half of the Southwest quarter ($S1\frac{1}{2}$ $SW\frac{1}{4}$) of Section Ten (10) in Township Thirteen (13) North of Range Fifty-three (53) East of the Montana Principal Meridian, Montana.

Tract No. 494-3

South half of the Southeast quarter ($S1\frac{1}{2}$ $SE\frac{1}{4}$) of Section Ten (10) in Township Thirteen (13) North of Range Fifty-three (53) East of the Montana Principal Meridian, Montana.

Tract No. 494-4

South half ($S1\frac{1}{2}$) of Section Eleven (11), Lots Two (2) and Three (3), Northwest quarter of the Northwest quarter ($NW\frac{1}{4}NW\frac{1}{4}$) of Section Thirteen (13) all of fractional Section Twenty-one (21) and Lot Eight (8) of Section Twenty-three (23) all in Township Thirteen (13) North of Range Fifty-three (53) East of the Montana Principal Meridian, Montana.

Tract No. 494-5

Northwest quarter ($NW\frac{1}{4}$), West half of the Northeast quarter ($W\frac{1}{2} NE\frac{1}{4}$) of Section Twelve (12) in Township Thirteen (13) North of Range Fifty-three (53) East of the Montana Principal Meridian, Montana.

Tract No. 494-6

Southwest quarter ($SW\frac{1}{4}$) of Section Twelve (12) in Township Thirteen (13) North of Range Fifty-three (53) East of the Montana Principal Meridian, Montana. [74]

Tract No. 494-7

Lots One (1), Two (2), Three (3), and Four (4), of Section Twelve (12) in Township Thirteen (13) North of Range Fifty-three (53) East of the Montana Principal Meridian, Montana.

Tract No. 494-8

Lots One (1), and Two (2), North half of the Southwest quarter ($N\frac{1}{2} SW\frac{1}{4}$) of Section Fourteen (14) in Township Thirteen (13) North of Range Fifty-three (53) East of the Montana Principal Meridian, Montana.

Tract No. 494-9

Southwest quarter of the Northeast quarter (SW $\frac{1}{4}$ NE $\frac{1}{4}$) and Southeast quarter of the Northeast quarter (SE $\frac{1}{4}$ NE $\frac{1}{4}$), Northwest quarter of the Northeast quarter (NW $\frac{1}{4}$ NE $\frac{1}{4}$), North half of the Southeast quarter (N $\frac{1}{2}$ SE $\frac{1}{4}$) and Lot Three (3) of Section Fourteen (14) in Township Thirteen (13) North of Range Fifty-three (53) East of the Montana Principal Meridian, Montana.

Tract No. 494-10

Northwest quarter (NW $\frac{1}{4}$) of Section Fourteen (14) in Township Thirteen (13) North of Range Fifty-three (53) East of the Montana Principal Meridian, Montana.

Tract No. 494-11

All of Section Fifteen (15) in Township Thirteen (13) North of Range Fifty-three (53) East of the Montana Principal Meridian, Montana.

Tract No. 494-12

Southwest quarter (SW $\frac{1}{4}$), that part of the Southeast quarter of the Northwest quarter (SE $\frac{1}{4}$ NW $\frac{1}{4}$) lying southeast of U. S. Highway No. 10, and more particularly described as follows:

Beginning at the Southeast corner of the SE $\frac{1}{4}$ NW $\frac{1}{4}$, thence west along the south line of said SE $\frac{1}{4}$ NW $\frac{1}{4}$ a distance of 1320 feet thence north along the west line of said SE $\frac{1}{4}$ NW $\frac{1}{4}$ a distance of 931.5 feet to the south line of U. S. Highway No. 10, thence north 67° 14' East along the south line of said highway a distance of 919.9 feet to its intersection with the North line of said SE $\frac{1}{4}$ NW $\frac{1}{4}$,

thence east along the north line of said SE $\frac{1}{4}$ NW $\frac{1}{4}$ a distance of 438.5 feet, thence south along the east line of said SE $\frac{1}{4}$ NW $\frac{1}{4}$ a distance of 1320 feet to the point of beginning, containing 35.85 acres, more or less, all in Section Sixteen (16), Township Thirteen (13) North of Range Fifty-three (53) East of the Montana Meridian, Montana.

Tract No. 494-13

Lots One (1), Two (2), Three (3), Four (4), Northwest quarter of the Northeast quarter (NW $\frac{1}{4}$ NE $\frac{1}{4}$), North half of the Northwest quarter (N $\frac{1}{2}$ NW $\frac{1}{4}$), Southwest quarter of the Northwest quarter (SW $\frac{1}{4}$ NW $\frac{1}{4}$) of Section Twenty-two (22) in Township Thirteen (13) North of Range Fifty-three (53) East of the Montana Meridian, Montana.

Tract No. 494-14A

Lots One (1), Two (2) and Thirteen (13) of Section Six (6) in Township Thirteen (13) North of Range Fifty-four (54) East of the Montana Principal Meridian, Montana. [75]

Tract No. 494-14B

Lots Three (3), Four (4), Five (5), Six (6), Seven (7), Eight (8), Eleven (11) and Twelve (12), Southeast quarter of the Northwest quarter (SE $\frac{1}{4}$ NW $\frac{1}{4}$), Northeast quarter of the Southwest quarter (NE $\frac{1}{4}$ SW $\frac{1}{4}$) of Section Six (6) in Township Thirteen (13) North of Range Fifty-four (54) East of the Montana Principal Meridian, Montana.

Tract No. 1-27

That portion of the Northwest quarter (NW $\frac{1}{4}$) lying northerly of the following described line:

Beginning at a point on the west line of said Section Sixteen (16), which point lies south 2262.5 feet from the northwest corner of said Section 16, thence north $67^{\circ} 14'$ East a distance of 2863 feet to a point on the east line of said NW $\frac{1}{4}$ which point lies south 1154.5 feet from the Northeast corner of the NW $\frac{1}{4}$ of Section 16 in Township Thirteen (13) North of Range Fifty-three (53) East of the Montana Principal Meridian, Montana.

Tract Nos. 1-47 and 1-53

Lot Four (4) and the Northeast quarter of the Northeast quarter (NE $\frac{1}{4}$ NE $\frac{1}{4}$) of Section Fourteen (14) in Township Thirteen (13) North of Range Fifty-three (53) East of the Montana Principal Meridian, Montana.

And that portion of the lands situate in the County of Prairie, State of Montana, to wit:

Tract No. 511-1

North half of the Northeast quarter (N $\frac{1}{2}$ NE $\frac{1}{4}$), West half of the Southwest quarter (W $\frac{1}{2}$ SW $\frac{1}{4}$) of Section Twenty (20) in Township Thirteen (13) North of Range Fifty-three (53) East of the Montana Principal Meridian, Montana.

Tract No. 511-2

East half of the Southwest quarter (E $\frac{1}{2}$ SW $\frac{1}{4}$), Southeast quarter (SE $\frac{1}{4}$), South half of the Northeast quarter (S $\frac{1}{2}$ NE $\frac{1}{4}$) of Section Twenty (20) in Township Thirteen (13) North of Range Fifty-three (53) East of the Montana Principal Meridian, Montana.

Tract No. 511-3

Lots One (1) and Two (2), of Section Twenty-eight (28) in Township Thirteen (13) North of Range Fifty-three (53) East of the Montana Principal Meridian, Montana.

Tract No. 511-4

Lots Two (2), Three (3) and Four (4), Northwest quarter ($NW\frac{1}{4}$), North half of the Northeast quarter ($N\frac{1}{2} NE\frac{1}{4}$) and Northwest quarter of the Southwest quarter ($NW\frac{1}{4} SW\frac{1}{4}$) less one acre in the extreme northwest corner of the Southeast quarter of the Northwest quarter ($SE\frac{1}{4} NW\frac{1}{4}$), said tract being dimensions of ten rods north and south by sixteen rods east and west in Section Twenty-nine (29) in Township Thirteen (13) North of Range Fifty-three (53) East of the Montana Principal Meridian.

Tract No. 511-5

Southeast quarter of the Southeast quarter ($SE\frac{1}{4} SE\frac{1}{4}$) of Section Thirty (30) in Township Thirteen (13) North of Range Fifty-three (53) East of the Montana Principal Meridian, Montana. [76]

Tract No. 511-6

Lots Three (3) and Four (4) of Section Thirty (30) in Township Thirteen (13) North of Range Fifty-three (53) East of the Montana Principal Meridian, Montana.

Tract No. 511-7

Northeast quarter ($NE\frac{1}{4}$) of Section Thirty (30) North half of the Southeast quarter ($N\frac{1}{2} SE\frac{1}{4}$) of

Section Thirty (30) in Township Thirteen (13) North of Range Fifty-three (53) East of the Montana Principal Meridian, Montana.

be and they are hereby condemned in fee simple for the public use, to wit: For the construction, operation and maintenance of project for utilization, reclamation and irrigation of arid and semi-arid lands and to further an effective rehabilitation program and stabilization of the agricultural economy settlement of citizens on lands reclaimed and irrigated and for the improvement of lands within the project's boundaries and all things incidental thereto for the Buffalo Rapids Project, including all rights of defendants whatsoever, and improvements thereon, subject, however, to existing rights of way for easements for any highway purposes, existing rights of way for telephone and telegraph lines, electric power lines, irrigation systems and ditches and subject to the outstanding rights, if any, under reservations and exceptions contained in the patents from the United States and the State of Montana, and subject to all reservations of minerals to plaintiff, the United States of America in patents issued.

And it further appearing to the Court that under date of April 27th, 1942, a Declaration of Taking was filed in the office of the Clerk of the above entitled Court, executed by Grover B. Hill, Assistant Secretary of Agriculture, and that there was deposited or paid into the registry of the Court, as the estimated compensation for the owners or owner thereof, or persons entitled thereto, for the taking of the said lands, the respective sums, to wit:

For tract 494 (embracing tracts 494-1, 494-2, 494-3, 494-4, 494-5, 494-6, 494-7, 494-8, 494-9, 494-10, 494-11, 494-12, 494-13, 494-14A and 494-14B)	\$23,526.00
For tract 511 (embracing tracts 511-1, 511-2, 511-3, 511-4, 511-5, 511-6 and 511-7).....	7,680.00
For tract 1-27.....	758.00
For tracts 1-47 and 1-53.....	425.00

and a Judgment was entered by the Court on the Declaration of Taking adjudging that title to the hereinabove described lands had vested in the United States of America. [77]

And it further appearing that the respective sums of money deposited in the registry of the Court as the estimated compensation for the taking of said lands, totaling \$32,389.00, lawful money of the United States of America, equals the total of the awards of compensation for the respective tracts, made by the commissioners and returned into Court,

It Is Ordered, Adjudged and Decreed That the respective sums so deposited in Court for the respective tracts of land constitute and are full, just compensation for the taking and acquiring of the property hereinabove described and that all title to the said property, subject to the reservations above set forth, in fee simple, is vested in the plaintiff, the United States of America.

Dated this the 5th day of December, 1945.

/s/ CHARLES N. PRAY,

United States District Judge.

[Endorsed]: Filed and entered Dec. 5, 1945.

Thereafter, on June 25, 1946, a Petition for Order Distributing Compensation deposited in registry of the Court was duly filed herein by Dawson County, Montana, in the words and figures following, to-wit: [79]

[Title of Court and Cause.]

PETITION FOR ORDER DISTRIBUTING
COMPENSATION DEPOSITED IN REG-
ISTRY OF THE COURT

To the Honorable Charles N. Pray, Judge of Said
Court:

The petitioner, Dawson County, Montana, a body politic and corporate, respectfully represents:

I.

That said petitioner is one of the defendants in the above entitled cause;

II.

That on the date when the petition for condemnation, declaration of taking and entry of judgment thereon were filed in this cause, the said defendant, Dawson County, Montana, a body politic and corporate, was the record owner of the fee simple title to the real estate involved in said condemnation proceeding and designated as Tracts Nos. 494-1 to 494-14B, inclusive, as particularly described in the final judgment in condemnation in the aforesaid action.

III.

That a declaration of taking was heretofore filed in this cause on the 27th day of April, 1942, and,

at the time it was filed, as petitioner [80] is informed and believes, the sum of Twenty Three Thousand Five Hundred Twenty-six and no/100 Dollars (\$23,526.00) was deposited for the taking of Tracts Nos. 494-1 to 494-14B, inclusive, with the Clerk of this Court as the estimated just compensation for the taking of the above described land;

IV.

That the petitioner, Dawson County, a body politic and corporate, as defendant in said cause, contends that the sum so deposited is adequate and just compensation for the land so taken; that heretofore and on the 11th day of July, 1944, petitioner was paid from the said funds, the sum of Ten Thousand Six Hundred Twenty-eight and 57/100 Dollars (\$10,628.57), and the remainder of the compensation deposited in the registry of the Court on account of the taking of the said tracts remains impounded therein.

V.

That the petitioner, Dawson County, Montana, a body politic and corporate, is the sole defendant interested in said real estate as the owner thereof, and all of the other defendants are barred from asserting any right, title, claim, lien or interest in the said funds heretofore deposited in registry of the said Court under and by virtue of Chapter 100, Laws of the Twenty-eighth Legislative Assembly of the State of Montana, 1943; that the petitioner desires that the sum of Twelve Thousand Eight Hundred Ninety-seven and 43/100 Dollars (\$12,-

897.43), the balance of funds on hand in the registry of the Court, be disbursed by the Clerk of this Court to the said defendant, Dawson County, Montana, a body politic and corporate.

Wherefore, petitioner prays that an order be entered in this cause finding title in fee simple in said real estate to be in Dawson County, Montana, a body politic and corporate, and in no other person or persons, and finding that none of the other defendants in this case have any right, [81] title or interest in said real estate, and directing the Clerk of this Court to pay to the benefit of the petitioner, Dawson County, Montana, a body politic and corporate, the balance of funds on hand deposited in the registry of this Court as hereinabove set out.

E. W. POPHAM,

D. C. WARREN,

Attorneys for Defendant, Dawson County, Montana.

[Endorsed]: Filed June 25, 1946.

Thereafter, on October 21, 1946, a Petition for Distribution was filed herein by Mary Hagen, et al, in the words and figures following, to wit:

[Title of District Court and Cause.]

PETITION FOR DISTRIBUTION

In accordance with the Answer, Counter Claim and Cross-Complaint filed herein and the briefs submitted, the defendants Mary Hagen, E. B. Clark, by their personal representatives and assignee and Minnie R. Evans, Albert Anderson and N. M. Coursolle, Minnie R. Evans, R. M. Smythe & Co. and all the bond holders of the Upper Glendive-Fallon Irrigation District who are benefitted by such proceedings and petition the court for an order distributing the proceeds of the condemnation deposited in the registry of the above-entitled court in the total sum of \$32,389.00 as follows:

1. That there be paid Dawson County, defendant, the sum of \$7313.51, and that said county be required to refund to the plaintiff and repay to the registry of said court the sum of \$3315.06 improperly withdrawn.
2. That there be paid defendant Prairie County the sum of \$2397.68 and that such county be required to refund to the plaintiff and repay to the registry of said court the sum of \$327.86, and
3. That the sum of \$22,677.81 be paid pro rata

to the defendant bond holders of said irrigation district after reasonable attorneys fees be deducted from said amount for Desmond J. O'Neil and P. F. Leonard who have appeared herein and by reason thereof said bondholders have benefitted.

DESMOND J. O'NEIL,
P. F. LEONARD,
Attorneys for Bondholders.

[Endorsed]: Filed Oct. 21, 1946.

Thereafter, on October 23, 1946, a Stipulation as to value of Tract No. 494 was duly filed herein, being as follows, to wit:

[Title of District Court and Cause.]

STIPULATION

It Is Hereby Stipulated and Agreed by and between the County of Dawson, State of Montana, acting by and through the Board of County Commissioners, and the United States that for all purposes of this condemnation proceeding the price and value of Tract No. 494, containing 4,164.69 acres, more particularly described in the petition filed herein, shall be the sum of \$23,526.00 and that the award of the Court, or any appraisers or com-

missioners appointed by the court in this proceeding, may be \$23,526.00.

Dated this 3rd day of September, 1941.

DAWSON COUNTY,
STATE OF MONTANA,

By /s/ G. A. HICKS,
Chairman, Board of County
Commissioners.

/s/ F. E. BROWN,
Member, Board of County
Commissioners.

/s/ A. W. EDWARDS,
Member, Board of County
Commissioners.

[County Seal]

Attest:

/s/ L. T. ELLIOT,
Clerk of the Board.

[Endorsed]: Filed Act. 23, 1946.

Thereafter, on May 2, 1947, a certificate of L. T. Elliot as to title to lands through tax deed procedure was duly filed herein, in the words and figures following, to wit: [152]

[Title of District Court and Cause.]

CERTIFICATE AS TO LANDS INVOLVED
AND DATES COUNTY TOOK TAX DEEDS

Office of the County Clerk and Recorder, L. T.
Elliot, Clerk, Glendive, Montana.

State of Montana,
County of Dawson—ss.

I hereby certify that Dawson County, State of Montana took title to the following described lands through tax deed procedure on the date set after the description.

	Sec.	
S $\frac{1}{2}$	1-13-53	Dec. 11, 1939
S $\frac{1}{2}$ SW $\frac{1}{4}$ frl.	10-13-53	Dec. 11, 1939
S $\frac{1}{2}$ SE $\frac{1}{4}$	10-13-53	Dec. 11, 1939
S $\frac{1}{2}$	11-13-53	Dec. 11, 1939
Lots 2 and 3, NW $\frac{1}{4}$ NW $\frac{1}{4}$	13-13-53	Dec. 11, 1939
All	21-13-53	Dec. 11, 1939
Lot 9	23-13-53	Aug. 15, 1939
Lots 1, 2, 3, 4.....	12-13-53	Dec. 11, 1939
W $\frac{1}{2}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$	12-13-53	Dec. 11, 1939
W $\frac{1}{2}$ NW $\frac{1}{4}$	12-13-53	Dec. 11, 1939
SW $\frac{1}{4}$	12-13-53	Dec. 11, 1939
Lots 1, 2, 3, 4.....	12-13-53	Dec. 11, 1939
SW $\frac{1}{4}$	14-13-53	Dec. 11, 1939
S $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$	14-13-53	Dec. 11, 1939
N $\frac{1}{2}$ SE $\frac{1}{4}$, Lot 3	14-13-53	Aug. 15, 1939
NW $\frac{1}{4}$	14-13-53	Dec. 11, 1939
All	15-13-53	Apr. 22, 1931
% Int. SW $\frac{1}{4}$	16-13-53	Dec. 11, 1939
SE $\frac{1}{4}$ NW $\frac{1}{4}$, South R. of W.....	16-13-53	Dec. 11, 1939
Lots 1 to 4, NW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$	22-13-53	Apr. 22, 1931
Lots 3 to 8 and 11 and 12, SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$	6-13-54	Apr. 22, 1931
Lots 1, 2 and 13	6-13-54	Dec. 11, 1939

Witness my hand and seal this 19th day of April
A.D., 1947.

[Seal]

L. T. ELLIOT,

Clerk and Recorder.

[Endorsed]: Filed May 2, 1947.

Thereafter, on September 4, 1947, the Decision of the Court was duly filed herein, being in the words and figures following, to wit: [154]

In the District Court of the United States in and
for the District of Montana, Billings Division

Civil No. 348

UNITED STATES OF AMERICA,

Plaintiff,

vs.

PAUL T. MARKEY, et. al.,

Defendants.

DECISION AND ORDER OF THE COURT

The principal question involved in the above condemnation proceeding at this time relates to the distribution of compensation now on deposit in the registry of the court, which, upon proper showing, should be made to the persons entitled thereto.

The lands embraced in this action were acquired by the Government through an agreement which included total acreage of the purchase and consideration therefor, and also through condemnation proceedings, wherein declaration of taking was filed (sec. 258a, Title 40, U.S.C.A.), and commissioners were appointed by the court to appraise the lands, which was done in accordance with the terms of the aforesaid agreement of purchase; and thereafter they made their return and awarded as just compensation for the same total acreage the same

amount of money as had theretofore been agreed upon between the Government and the defendants herein, Dawson and Prairie Counties, which sum was thereafter deposited in the registry of the court. Final judgment was entered on the awards of the commissioners, and no appeal was ever taken therefrom.

The court thereafter ordered distribution from the registry to the defendant counties, Dawson and Prairie, and to each, upon representations made to the court, such sums as would equal the delinquent unpaid general taxes, on the lands embraced in the purchase and thereafter condemned.

Hearings have been held in respect to the alleged proper amounts due the counties, and the bondholders, and others listed [155] as being entitled to payment of certain sums from the court registry; voluminous briefs have been filed, following oral argument, together with several documents marked as exhibits.

Counsel claim for the bondholders the balance remaining in the registry of the court amounting to about the sum of \$19,034.89; also the sum of \$3,315.06, which they allege was improperly paid to Dawson County and the sum of \$327.86 as excess payment to Prairie County; also they claim the sum of \$758 on deposit in the registry as due on tract 1-27, known as the Yale tract, also the sum of \$425 as due them from the deposit in the registry to the credit of tracts Nos. 1-47 and 1-53, known as Scottish-American Mortgage Company tract.

From a consideration of the law and the facts

as they appear to the court the counties aforesaid were entitled to payment from the registry of such sums of money as represented the delinquent unpaid taxes on the lands condemned, in which the counties held title at the time such condemnation proceedings were begun. After such payment was made to the counties, a balance remained, and still remains, impounded in the registry of the court, subject to further order of distribution.

Of the separate tracts of land involved, the one known as the Henderson tract (No. 1-12) was not embraced in the irrigation district in question and was not subject to the lien of the bondholders.

As to the Yale tract, No. 1-27, it does not appear that it was susceptible of irrigation, was ever assessed for that purpose, or that it was obtained from either of the counties, or that the irrigation district or bondholders have any lien upon the compensation of \$758 deposited in the registry of the court to the credit of this piece of land.

The land designated as the Scottish-American Mortgage Co. tract, Nos. 1-47, and 1-53, for which \$425 was deposited in the registry, does not appear to have been legally embraced in the irrigation district in the absence of notice or consent, and that upon foreclosure in which the irrigation district was included as a party defendant, no claim of lien or otherwise [156] was made by such defendant. The irrigation district and the bondholders do not appear to have any interest in the distribution of this fund.

The superiority of general taxes assessed against

the lands in question over special assessments and lien of bondholders is indicated by the decision in *State ex rel Malott, et al., vs. Board of County Commissioners*, 89 Mont. 37, wherein it was held that when the county acquired lands by tax deed on account of delinquent taxes and irrigation district assessments, it takes and holds such title as a trustee. Other authorities apply to the state of facts presented here and hold that after the payments to the counties of general taxes, and to the other claimants listed, under the equity rule it would seem that the balance of the money remaining in the registry should be paid to the bondholders.

It appears that the irrigation district had ceased to function as such in the year 1927, and was therefore not functioning when tax title deeds were taken by the counties. It was also held that tax title deeds taken for lands in irrigation districts (taken prior to amendment of section 2215, Laws of 1937, Chapter 63, Sec. 1, p. 106) extinguished all liens and encumbrances against the lands. *State ex rel Malott vs. Cascade County, et al.*, 94 Mont. 394, 406; *Rosebud Land & Improvement Co. vs. Carterville Irrigation District, et. al.*, 102 Mont. 465.

The registry fund above described appears to be the only fund to which the bondholders may have recourse in this proceeding to apply on the bonded indebtedness of the district. Distribution to the bondholders apparently is required to be made on a pro rata basis. *State ex rel Central Auxiliary Corporation vs. Rorabeck, County Treasurer, et al.*, 111 Mont. 320. The legal rights to distribution

became fixed and are determinable as of the date the money was deposited in the registry of the court.

The claim by counsel for the bondholders that assessments made against personal property which became a lien on real estate are inferior in rank to assessments made for the purposes of the [157] irrigation district, seems to be clearly established to the contrary in the supplementary brief by the Government, wherein statutes and authorities are cited which, in the court's opinion, plainly declare the law on the facts presented here. The following concluding statement of counsel appears therein: "It will be noted that until Section 2215.9 was amended by enactment of the 1937 legislative session that assessments of an irrigation district were inferior to the general taxes. See Chapter 63, page 106, 1937 Session Laws. Record will disclose that no assessments were made by the irrigation district for the year of 1937 or subsequent thereto. Clearly, in the light of the law any taxes assessed against personal property for general purposes and became a lien upon the lands of the owner are superior to assessments made to pay interest on bonds, or other purposes in connection with the irrigation district, and this is substantially true by reason of there being no statute requiring that irrigation district be notified before taxes on personality of an owner would be permitted to become a lien against the lands superior to the lien of bondholders or assessments made for the irrigation district."

. It appears that the irrigation district was legally

organized and that the irrigable area subject to the lien of the bondholders was fixed and determined by the board of directors as provided by law, and that this was done prior to the making of assessments and the issuance of bonds. So far as can be ascertained from the record none of the land owners in the district ever paid any of these assessments or any part of the bonded indebtedness, and none of the lands designated by the board of directors as irrigable were ever irrigated. Section 7235, M.C. 1921, as amended by Chapter 147, Session Laws of 1923, p. 473.

Dawson County, Montana, offered to sell 4,164.69 acres of land to the Government for the consideration of \$23,526, and in this offer of sale there was no division of the lands to be sold into tracts. Here is the offer and agreement referred to: [158] "It is hereby stipulated and agreed by and between the County of Dawson, State of Montana, acting by and through the Board of County Commissioners, and the United States, that for all purposes of this condemnation proceeding the price and value of tract No. 494, containing 4,164.69 acres, more particularly described in the petition filed herein, shall be the sum of \$23,526.00 and that the award of the court, or any appraisers, or commissioners appointed by the court in this proceeding, may be \$23,526.00."

Counsel for the Government states that the lands were divided into tracts as shown by the complaint in order to determine who should be named as parties defendant and in what tracts or parcels of land

they might claim an interest, and in this connection counsel further stated: "The sums allocated to the respective tracts constituted a division of the compensation deposited in the registry of the court based upon appraisals made by representatives or agents of the United States, and was provided for me as attorney for the Government, by Harry C. Anderson, Project Manager of the Buffalo Rapids Project. The same statement applies as to the lands offered for sale to the Government by Prairie County, Montana, and particularly as to the allocation thereof to the respective tracts. So far as the writer knows, Dawson County, Montana, was not consulted at any time or at all as to the allocation of the compensation to the respective tracts of land. Assurance, however, was given to Mr. D. C. Warren, Attorney for Dawson County, Montana, that commissioners appointed would be requested to award a sum equal to the offer made and like assurance was given to the County Attorney of Prairie County, Montana, and awards were so made by the commissioners."

Where the purchase price of property has been agreed upon by the owner and the Government, and the latter should thereafter commence condemnation proceedings, the price agreed upon is still binding upon both parties. *Bank of Edenton v. U. S.* 251, 254; *Danforth v. U. S.* 308 U. S. 271, 282; *Oliver v. U. S.* 156 F(2), 281, 282. [159]

Counsel explains that the lands were condemned so as to avoid any question relating to title, and that an effort was made to name as defendants all per-

sons who might claim any interest in the lands or any part thereof.

The court has read the transcript of the hearings and the minutes of the irrigation district on the designation of irrigable areas and the levying of assessments thereon, that is, for the purposes of the irrigation district, and it would seem that the commissioners have fairly complied with the law in that respect.

The Counties of Dawson and Prairie had a first lien on the compensation deposited in the registry of the court to the extent of the general taxes delinquent and unpaid against the lands in question at the time the tax deeds were taken, and statements were furnished to the court of the amounts claimed to be due the counties respectively by reason of such delinquent and unpaid taxes at the time they applied to the court for distribution of the sum to which each county claimed to be entitled, and such payments were made accordingly. Counsel for the bondholders allege that an overpayment has been made by the court to Dawson County and also to Prairie County as hereinbefore set forth, and counsel for Dawson County claims that his client is entitled to all the money still remaining in the registry of the court.

No part of the Yale tract was designated as irrigable land and was therefore not subject to the lien of the bondholders, and the compensation deposited, after payment of any taxes that may be found delinquent, should be distributed to the former owners of said tract. As to the tract, 1-47 and 1-53, the

court is satisfied that the compensation therefor on deposit in the registry of the court should be distributed to the Scottish American Mortgage Co., Ltd., or its assignee. It seems doubtful whether any portion of this tract in Sec. 14 was ever properly included or properly designated as an irrigable area, and reference is made to consideration heretofore given this subject. [160]

In regard to the recent question propounded by the court to counsel on the subject of proper distribution of funds in the court registry only one brief has been received, and that one came from Mr. Leonard, who is entitled to commendation for his research, although the question was only partly answered; however, upon further consideration of the subject distribution will be made in the manner herein set forth.

Messrs. O'Neil and Leonard, representing the bondholders, have suggested to the court the propriety of allowing them compensation for legal services rendered the bondholders, intending that such allowance should be fixed by the court in a sum commensurate with the value thereof and be paid to them out of the registry of the court. It would appear that such services have inured to the benefit of the parties thus represented, but that no authority has been cited, and the court knows of none, which would authorize the payment of counsel fees as requested in a proceedings of this kind.

After consideration of the calculations submitted by Messrs. Leonard and O'Neil on the subject of overpayment from the registry of the court to the

counties, Dawson and Prairie, the court has come to the conclusion that counsel have accurately set forth the total amounts actually due the counties, and the exact amounts representing the overpayments made to the counties, which amounts will be added to the sum now remaining in the registry as due the bondholders, and the excess payments will be ordered returned by the counties to the registry of the court. The overpayment to Dawson County is the sum of \$3,315.06, and the overpayment to Prairie County is the sum of \$327.86.

The statement of facts in respect to overpayment to the counties appears on page 5 of counsel's brief, received June 21st, 1947, reading as follows. [161]

"Correction on Distribution

"As shown by the files the complaint divided the lands into twenty-four separate tracts with separate ownership and interests and the answer of Dawson County conformed thereto and said County made claim to said fourteen tracts and Prairie County made claim to seven tracts; the details in that respect are shown by the answers. Through error and nearly a year prior to the actual determination of the value of the separate tracts and in accordance with an advance estimate on each of said tracts on July 11, 1944, Dawson County was paid on tracts 494-1 to 494-14, the sum of \$10,628.57 and Prairie County was paid on tracts 511-1 to 511-7, \$2725.54, but when the commission finally made the award and the final judgment was entered

establishing the award the following errors were ascertained which are beyond dispute, to wit:

Dawson County		County was paid estimated tax
Tract 494-8	award.....\$ 680.50	\$ 695.58
Tract 494-11	award..... 995.00	2,348.94
Tract 494-13	award..... 606.90	2,552.94
Total		\$2,282.40
Hence, the county was overpaid		\$3,315.06
Prairie County		Paid estimated taxes
Tract 511-6	award.....\$ 890.00	\$1,217.86
Prairie County was overpaid on that tract		\$327.86

The mistake is evident and was easily made. There is no dispute as to the general taxes but the awards on the separate tracts in the tracts mentioned were less than the taxes. It is possible that the commissioners could have increased the awards but did not do so and hence under Section 258a it is proper, we submit, for the Court to enter a judgment against the United States for the additional sum of \$3642.92, representing the excess awards made to the Counties on the tracts above as the Counties got more than the awards which is clearly improper."

Counsel for the Government agrees that the figures on overpayment to the counties submitted by counsel for the bondholders is substantially correct and should be accepted by the court. Counsel for Dawson County has not filed any brief or made any showing in response to the recent request of the court relating [162] to the subject of distribution of the funds, but has taken issue with counsel for

the bondholders and the Government relating to overpayment to the counties, with which the court is unable to agree.

Accordingly it is ordered and this does order that the Counties, Dawson and Prairie, return forthwith to the registry of the court the respective amounts above set forth as overpayments, and in default thereof, the proper authorities of the Government will be so advised, in order that proceedings may be commenced for the recovery of such overpayments; and in the meantime, under Section 258a judgment for the additional sum of \$3642.92, representing the overpayments, will be ordered, and is hereby ordered, entered against the United States, and distribution of the funds in the registry of the court will be made according to the foregoing decision. Exceptions are allowed counsel.

CHARLES N. PRAY,
Judge.

[Endorsed]: Filed Sept. 4, 1947. [163]

Thereafter, on October 25, 1947, a Notice of Appeal by Dawson County, Montana, was duly filed herein, as follows, to-wit: [164]

[Title of District Court and Cause.]

NOTICE OF APPEAL

To United States of America, Plaintiff, and to Messrs. John B. Tansil and Charles W. Buntin, Its Attorneys in Fact, and to Messrs. P. F. Leonard and Desmond J. O'Neil, Attorneys for Certain Bondholders, and to the Clerk of the Above-Entitled Court:

You and each of you will please take notice that the defendant, Dawson County, Montana, a body politic and corporate, in the above-entitled action, by and through the undersigned, its attorneys, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the decision of the Court entered in the said action on September 4, 1947, and to parts thereof as follows:

I.

On page 9, paragraph II, beginning in Line 5 reading "It is ordered and this does order that the Counties of Dawson and Prairie return forthwith to the Registry of the Court the respective amounts above set forth as overpayments" being the sum of Three Thousand Three Hundred Fifteen and 06/100 Dollars (\$3,315.06) as to Dawson County and the sum of Three Hundred Twenty-Seven and 86/100 Dollars (\$327.86) as to Prairie County."

II.

That part of the decision of the Court hereinbefore referred to on page 9 thereof, beginning at line 14 in paragraph II reading “and distribution of the funds in the Registry of the Court will be made according to the [165] foregoing decision” which judgment, order and decision distributed to the bondholders of the Upper Glendive-Fallon Irrigation District, a party defendant in said action, the sum of Sixteen Thousand Two Hundred Twelve and 49/100 Dollars (\$16,212.49), moneys due appellant herein.

Dated this 25th day of October, 1947.

/s/ D. C. WARREN,

/s/ E. W. POPHAM,

Attorneys for Defendants and Appellant Dawson
County, Montana.

[Endorsed]: Filed Oct. 25, 1947. [166]

Thereafter, on October 25, 1947, Cost Bond on Appeal was duly filed herein, being as follows, to-wit: [169]

[Title of District Court and Cause.]

COST BOND ON APPEAL

Know All Men by These Presents:

That we, Dawson County, Montana, a body politic and corporate, as Principal, and The National Surety Corporation, a corporation, as Surety, are held and firmly bound unto the United States of America in the full sum of Two Hundred Fifty Dollars (\$250.00) to be paid to said United States of America, to which payment well and truly to be made we bind ourselves, our successors and assigns, jointly and severally by these presents.

Sealed with our seals this 25th day of October in the year of 1947.

Whereas, lately in the above-entitled action, a decision was rendered against the Defendant, Dawson County, Montana, therein and the said Defendant is about to appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the said decisions and order therein contained to reverse said judgment, order and decision.

Now, therefore, the condition of the above obligation is such that if the above-named Defendant shall pay all costs if the said appeal is dismissed or the judgment, order and decision affirmed or

shall pay such costs as the appellate court may award if the said judgment, order and decision is modified, then the above obligation to be void, otherwise to remain in full force and virtue. [170]

In accordance with Rule 90 of the Rules of the above-named Court of the United States, for the District of Montana, the said The National Surety Corporation, a surety herein, expressly agrees herein that in case of a breach of any conditions of this bond, that the above-named Court upon notice to the said surety of not less than ten days, may proceed summarily in the above-entitled action in which this bond is being given, to ascertain the amount which the said surety is bound to pay on account of such breach, and render judgment therefor against the said surety and award execution therefor.

[Seal]

DAWSON COUNTY,
MONTANA,
A Body Politic and
Corporate.

By /s/ A. W. EDWARDS,
Chairman of Its Board of
Commissioners.

[Seal]

THE NATIONAL SURETY
CORPORATION,

By /s/ D. C. WARREN,
Its Attorney in Fact.

[Endorsed]: Filed Oct. 25, 1947. [171]

Thereafter, on December 3, 1947, an Order was filed and entered herein, extending time for filing and docketing the Record on Appeal in the United States Circuit Court of Appeals, said Order being as follows, to-wit: [184]

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO FILE
RECORD ON APPEAL AND DOCKET
ACTION

For good cause appearing, it is ordered that the time for filing the record on appeal, and docketing the action in the United States Circuit Court of Appeals for the Ninth Circuit, in the above-entitled cause, be and hereby is extended to and including the 23rd day of January, A.D. 1948, said appeal being taken by Dawson County, Montana, from the decision and order of the Court awarding certain money now in the registry of the Court to the bondholders involved in the action.

Dated December 3, 1947.

CHARLES N. PRAY,
United States District Judge for the District of
Montana.

[Endorsed]: Filed and Entered December 3,
1947. [185]

Thereafter, on December 4, 1947, Notice of Cross Appeal by Mary Hagen, et al, was duly filed herein, being as follows, to-wit: [186]

[Title of District Court and Cause.]

NOTICE OF APPEAL, CROSS-APPEAL

Notice is hereby given that the defendants Mary Hagen and E. B. Clark and Minnie R. Evans, on their own behalf and on behalf of all bondholders of the Upper Glendive-Fallon Irrigation District, defendants herein, appeal to the Circuit Court of Appeals for the Ninth Circuit from the decision of the District Court herein rendered and entered on September 4, 1947, as to portions thereof as follows:

I.

From that portion thereof holding as follows:

“As to the Yale tract, No. 1-27, it does not appear that it was susceptible of irrigation, was ever assessed for that purpose, or that it was obtained from either of the counties, or that the irrigation district or bondholders have any lien upon the compensation of \$758 deposited in the registry of the court to the credit of this piece of land.

“The land designated as the Scottish American Mortgage Co. tract, Nos. 1-47, and 1-53, for which \$425. was deposited in the registry, does not appear to have been legally embraced in the irrigation district in the absence of notice

or consent, and that upon foreclosure in which the irrigation district was included as a party defendant, no claim of lien or otherwise was made by such defendant. The irrigation district and the bondholders do not appear to have any interest in the distribution of this fund." * * * [187]

"No part of the Yale tract was designated as irrigable land and was therefore not subject to the lien of the bondholders, and the compensation deposited, after payment of any taxes that may be found delinquent, should be distributed to the former owners of said tract. As to the tract, 1-47 and 1-53, the court is satisfied that the compensation therefor on deposit in the registry of the court should be distributed to the Scottish American Mortgage Co., Ltd., or its assignee. It seems doubtful whether any portion of this tract in Sec. 14 was ever properly included or properly designated as an irrigable area, and reference is made to consideration heretofore given this subject."

II.

From that portion thereof as follows:

"Messrs. O'Neil and Leonard, representing the bondholders, have suggested to the court the propriety of allowing them compensation for legal services rendered the bondholders, intending that such allowance should be fixed by the court in a sum commensurate with the

value thereof and be paid to them out of the registry of the court. It would appear that such services have inured to the benefit of the parties thus represented, but that no authority has been cited, and the court knows of none, which would authorize the payment of counsel fees as requested in a proceeding of this kind."

That the court should have allowed reasonable attorneys fees against the funds to be distributed to all bondholders as they will receive the benefit of the defense maintained by the bondholders and should bear the reasonable expense and burdens thereof.

III.

That the order or decision in this case should require payment of interest as follows: [188]

Interest should be charged to the United States from the time of deposit until the time of decision and interest should be charged on the judgment and on the moneys due on distribution from entry of judgment.

This is a cross-appeal by said appellees.

Dated this 18th day of November, 1947.

D. J. O'NEIL,
P. F. LEONARD,

Attorneys for Said Defendants, Appellees and
Cross-Appellants.

[Endorsed]: Filed Dec. 4, 1947. [189]

Thereafter, on December 4, 1947, Statement of Points under Cross Appeal was duly filed herein, being as follows, to-wit: [192]

[Title of District Court and Cause.]

STATEMENT OF POINTS UNDER CROSS APPEAL, RULE 75(D)

The points upon which the cross appellants intend to rely upon the appeal are:

I.

The District Court was unauthorized to exclude from the Upper Glendive-Fallon Irrigation District the Yale tract No. 1-27 and the Court, without authority, deprived the bondholders of their lien on said lands and their right to compensation thereby to the extent of \$758.00.

II.

The District Court was unauthorized to exclude from the Upper Glendive-Fallon Irrigation District the Scottish American Mortgage Co., Ltd., tract Nos. 1-47 and 1-53 and the Court, without authority, deprived the bondholders of their lien on said lands and their right to compensation thereby to the extent of \$425.00.

III.

That all bondholders have received the benefit of the defense presented and maintained by attorneys D. J. O'Neil and P. F. Leonard, and all bondholders should share in the reasonable expense of this litiga-

tion and a reasonable attorneys' fee should be allowed and charged against all bondholders.

IV.

That the United States should be charged with interest on the funds deposited until entry of judgment and from the time of entry of judgment interest should be charged on the [193] amount directed to be distributed either against the United States or Dawson County, the appellant.

Dated this 18th day of November, 1947.

D. J. O'NEIL

P. F. LEONARD,

Attorneys for said Defendants, Appellees and Cross Appellants.

[Endorsed]: Filed Dec. 4, 1947. [194]

In the District Court of the United States in and
for the District of Montana

CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD ON APPEAL

United States of America,
District of Montana

I, H. H. Walker, Clerk of the United States District Court for the District of Montana, do hereby certify and return to The Honorable, The United States Circuit Court of Appeals for the Ninth

Circuit, that the foregoing volume consisting of 198 pages, numbered consecutively from 1 to 198 inclusive, constitutes a full true and correct transcript of all portions of the record in case number 348, United States of America vs. Paul T. Markey, et al, designated by the parties as the record on appeal therein, except item 12 in appellants' designation which was by the Court excluded from the record on appeal herein, and except items 1 and 2 in appellees' and cross-appellants' designation for additional portions of the record on appeal which are incorporated in this transcript on appeal by appellants' designation, and except items 4, 5, 8 and 9 in appellees' designation for additional portions of the record which are original exhibits, the said original exhibits being transmitted to the United States Circuit Court of Appeals pursuant to order of this Court dated December 22, 1947.

I further certify that the costs of the transcript on appeal herein amount to the sum of Thirty-four and 60/100ths Dollars, (\$34.60), the appellant having paid \$24.30 thereof, and the appellees and cross-appellants having paid \$10.30 thereof.

Witness my hand and the seal of said Court at Great Falls, Montana, this 22nd day of December, A. D. 1947.

H. H. WALKER,

Clerk, U. S. District Court,
District of Montana.

By /s/ C. G. KEGEL,

Deputy Clerk. [198]

[Endorsed]: No. 11821. United States Circuit Court of Appeals for the Ninth Circuit. Dawson County, Montana, Appellant, vs. Mary Hagen, E. B. Clark and Minnie R. Evans, on their own behalf and on behalf of all bondholders of the Upper Glendive-Fallon Irrigation District of the State of Montana, and United States of America, Appellees, and Mary Hagen, E. B. Clark and Minnie R. Evans, on their own behalf and on behalf of all bondholders of the Upper Glendive-Fallon Irrigation District of the State of Montana, Appellants, vs. Edna Yale, Allen W. Yale and Ruby Yale, his wife and Ruth Petterson and Hans Petterson, her husband, The Scottish American Mortgage Company, Limited, United States of America, Dawson County and Prairie County, Appellees. Transcript of Record. Upon Appeals from the District Court of the United States for the District of Montana.

Filed December 29, 1947.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

United States Circuit Court of Appeals
for the Ninth Circuit

No. 11821

DAWSON COUNTY, MONTANA, a body
political and corporate,

Appellant,

vs.

MARY HAGAN, et al,

Appellees.

STATEMENT OF POINTS ON WHICH AP-
PELLANT INTENDS TO RELY ON THIS
APPEAL AND DESIGNATION OF PARTS
OF RECORD WHICH APPELLANT
THINKS NECESSARY FOR CONSID-
ERATION THEREOF

Appellant intends to rely on this appeal on the contentions that the District Court of the United States for the District of Montana, being the trial court below, erred:

1. In adopting the so-called "Equity Rule" in making distribution to the bondholders of the Upper Glendive-Fallon Irrigation District, for the reason that the said bondholders had no lien on the lands involved herein, title to the same having passed to Appellant by tax deeds, which under Montana law created a new title in Appellant, free and clear of all liens and encumbrances against the land. (Paragraph 2, Lines 16 to 24, inclusive, Page 3, Decision of the Court, filed September 4, 1947).

2. In finding an overpayment to Appellant (Page 8, Paragraph 1 of Page 9, Lines 1 to 4, inclusive, Decision of the Court, filed September 4, 1947), the same being in conflict with that part of the Court's decision set forth on Page 6, Paragraph 3, Lines 11 to 24, inclusive.
3. Distribution of the funds in the registry of the Court, as ordered in Paragraph 1, Page 9, Lines 5 to 16, inclusive, Decision of the Court filed September 4, 1947, is improper, being in fact a collateral attack on the tax title of Appellant to the lands, contrary to all of the provisions of Montana law relating to tax deed titles.

Exceptions to all of the foregoing were allowed counsel by the Court in its decision of September 4, 1947.

The points of law upon which Appellant intends to rely, stated in general terms, are as follows:

1. That Appellant by contract sold to the United States 4164.69 acres of land for an agreed consideration of \$23,526.00 by written stipulation entered into September 3, 1941, conforming to previous options, resolutions and agreements entered into prior thereto, possession being taken by the United States of said lands, and the present action being brought only for the purpose of quieting title. (Decision of the Court, filed September 4, 1947, Paragraph 2, Page 1, Lines 5 to 16, inclusive; Paragraph 2,

Page 4, Lines 31 to 34, inclusive; Page 5, Lines 1 to 8, inclusive, and Paragraph 2, Page 5, Lines 29 to 34, inclusive.)

2. Appellant was the owner in fee under tax deeds to the lands sold by it to the United States, none of which were subject to any liens of bondholders of the Upper Glendive-Fallon Irrigation District. (Answer of Dawson County, filed March 20, 1944; Declaration of Taking, filed March 23, 1940; Stipulation of Dawson County, filed October 23, 1946.)
3. Appellant had prior right to all of its general taxes of said 4164.69 acres for the full consideration thereof, as agreed upon by the United States and Dawson County, and not subject to division into tracts made by the Federal agencies for their convenience. (Decision of the Court, filed September 4, 1947, Paragraph 3, Page 6, Lines 11 to 24, inclusive, and Paragraph 1, Page 5, Lines 9 to 28, inclusive.)

Therefore, pursuant to Rule 19, Paragraph 6, Appellant designates for printing herein the following documents in the record as certified and filed, except in so far as there may be duplications therein of documents and papers:

1. Second amended complaint, filed March 27, 1944.
2. Answer of Dawson County, filed May 20, 1944.

3. Reply of Dawson County, filed May 20, 1944.
4. Order of Distribution, filed July 11, 1944.
5. Petition for Distribution of Dawson County, filed June 25, 1946.
6. Stipulation of Dawson County, filed October 23, 1946.
7. Decision of the Court, filed September 4, 1947.
8. Notice of Appeal, filed October 25, 1947.
9. Cost Bond on Appeal, filed October 25, 1947.
10. Statement of Points on which Appellant Intends to Rely, filed January 19, 1948.

Dated this 17th day of January, 1948.

/s/ D. C. WARREN,

/s/ E. W. POPHAM,

Attorneys for Appellant.

Service of a copy of the within Statement of Points on which Appellant intends to Rely on this Appeal and Designation of parts of Record which Appellant thinks necessary for consideration thereof, is hereby acknowledged this 17th day of January, 1948.

/s/ P. F. LEONARD,

/s/ DESMOND J. O'NEIL,

Attorney for Appellees,

Glendive, Montana.

[Endorsed]: Filed Jan. 19, 1948.

[Title of Circuit Court of Appeals and Cause.]

STATEMENT OF POINTS AND DESIGNA-
TION OF RESPONDENTS AND CROSS-
APPELLANTS MARY HAGEN, ET AL.

I.

Respondents and cross-appellants adopt as their points on appeal, their statement of points under cross appeal and now appearing in the transcript.

II.

The said respondents and cross-appellants also designate for printing the following additional portions of the transcript not designated by the appellant:

1. Return and report of the Commissioners appointed in condemnation describing property and fixing compensation, filed October 1, 1945.
2. Statement dated April 19, 1947, showing lands involved and dates county took tax deeds.
3. Answer counter claim and cross complaint filed by Mary Hagen, E. B. Clark, Minnie R. Evans on their behalf and on behalf of all bondholders filed May 13, 1944.
4. Petition for distribution of bondholders filed October 21, 1946.
5. Final judgment in condemnation filed December 5, 1945.
6. Notice of cross appeal of Hagen, et al. filed December 4, 1947.

7. Bond on Cross appeal filed November . . , 1947.
8. Statement of points under Cross appeal filed December 4, 1947.

III.

The respondents and cross appellants now respectfully request the above entitled Circuit Court of Appeals to consider on appeal as a part of the transcript and without printing the following original exhibits which cannot be easily printed and which would involve excessive expense in the printing or photographic copies thereof:

1. Two large statements with figures, marked Dawson County exhibit No. 1 (and Exhibit A) showing delinquent taxes and assessments and other details.
2. A large map of the Upper-Glendive Fallon Irrigation District and marked Exhibit No. 3.
3. Bondholders Exhibit No. 3, being a type-written record of about 42 pages duly certified by an Abstract Company and entitled Abstract of the Proceedings of the Establishment and Organization of the Upper Glendive-Fallon Irrigation District.

Dated this 22nd day of January, 1948.

/s/ D. J. O'NEIL,

/s/ P. F. LEONARD,

Attorneys for Respondents
and Cross-Appellants.

[Endorsed]: Filed Jan. 27, 1948.

[Title of Circuit Court of Appeals and Cause.]

APPLICATION OF MARY HAGEN, ET AL.
THAT CERTAIN EXHIBITS NEED NOT
BE PRINTED

Come now the respondents and cross-appellants, Mary Hagen, et al., and respectfully petition the court for permission to have the court consider the following original exhibits as now appearing in the transcript on appeal and as certified to by the Clerk of the United States District Court for the District of Montana without printing such exhibits for the reason that Exhibit No. 1 consists of statements with figures which would be difficult to print and Exhibit No. 3 is a large map which the court would properly refer but it would be difficult and expensive to print or photograph and Bondholders Exhibit No. 3 is an bstract certified to by an Abstract Company and shows the establishment and organization and issuance of bonds of the Irrigation District in question and consists of about 42 pages and may be properly referred to as an abstract without re-printing. That respondents and cross-appellants have not furnished their counsel with funds for printing and the printing of said original exhibits would be unreasonably expensive and may be properly considered in the original form and request therefor is made accordingly.

Dated this 22nd day of January, 1948.

/s/ D. J. O'NEIL,

/s/ P. F. LEONARD,

Attorneys for Respondents
and Cross Appellants.

[Affidavit of mailing attached.]

[Title of Circuit Court of Appeals and Cause.]

ORDER THAT CERTAIN EXHIBITS NEED
NEED NOT BE PRINTED

On Consideration of the application, and good cause therefor appearing, It Is Ordered that Exhibits No. 1 and No. 3 and Bondholder's Exhibit No. 3, need not be printed in the transcript of record, but will be considered by the Court in their original form.

/s/ FRANCIS A. GARRECHT,
Senior United States
Circuit Judge.

